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No. 391

# United States Court of Appeals

## For the Second Circuit.

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R. S. DASS BADHWAR and R. B. LACHHMANDASS MOHANLAL & SONS, LTD., composing the co-partnership doing business under the firm name and style of MULKRAJ BROTHERS and BADHWAR,

*Plaintiffs-Appellants,*

*against*

THE COLORADO FUEL AND IRON CORPORATION, ISBRANDTSEN COMPANY, INC.,

*Defendants-Appellees,*

*and*

AMERICAN-HAWAIIAN STEAMSHIP COMPANY,

*Defendant-Appellee-Appellant.*

(Civil Action No. 62-10.)

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## APPENDIX TO PLAINTIFFS-APPELLANTS' BRIEF.

**On Appeal From the United States District Court for the Southern District of New York.**

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York 7, N. Y.—REctor 2-6978—1956

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### Witnesses for Defendant Colorado Fuel and Iron Corporation:


| | |
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| Becker, Frederick R., Jr.: | |
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| Wire, Ward: | |
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### Witness for Defendant Isbrandlsen Company, Inc.:


| | |
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| Crinkley, Matthew S.: | |
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### Witnesses for Defendant American-Hawaiian Steamship Company:


| | |
|---|---|
| Bain, Frank H.: | |
| Direct by Mr. Tillinghast | 127a |
| Cross by Mr. Dunn | 128a |
| Gray, Robert L.: | |
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# United States Court of Appeals

FOR THE SECOND CIRCUIT.

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and

AMERICAN-HAWAIIAN STEAMSHIP COMPANY,

Defendant-Appellee-Appellant.

(Civil Action No. 62-10.)

## Relevant Docket Entries.

| Date | Filing Proceedings |
|---|---|
| Oct. 26-50 | Filed Complaint and Issued Summons |
| Dec. 27-50 | Filed Answer of Defendant Colorado Fuel & Iron Corp. |
| Jan. 11-51 | Filed Answer of Defendant Isbrandtsen Company, Inc. |
| Jan. 18-51 | Filed Answer of Defendant American Hawaiian S. S. Co. and Cross Claim against defendant Isbrandtsen |
| Mar. 6-51 | Filed Defendant Isbrandtsen's Answer to Cross Claim of American Hawaiian S. S. Co. |

*Relevant Docket Entries*

| | | |
|---|---|---|
| Dec. | 22-52 | Filed Depositions of Dalton, et. al. |
| Dec. | 22-52 | Filed Exhibit from New Orleans, La. |
| June | 1-53 | Filed Stipulation of Facts |
| Dec. | 29-53 | Filed "Transcript of Newspaper Stories Re 1948 Maritime Strike, New Orleans, La. |
| Mar. | 16-54 | Filed Stip. & Order substituting G. P. Agarwal for V. P. Agarwal |
| May | 12-54 | Filed Depositions from Bombay, India |
| Jan. | 3-55 | Filed Notice to amend answer upon trial of defendant Isbrandtsen |
| Jan. | 7-55 | Filed Notice to amend answer upon trial of defendant Colorado |
| Jan. | 24-55 | Filed Notice to amend complaint at trial |
| Jan. | 19-55 | Trial begun before Ryan, J. |
| Sept. | 12-55 | Filed Opinion dismissing complaint and cross claim |
| Oct. | 10-55 | Filed Plaintiffs' Notice of Appeal |

[1530]

## Judgment of Dismissal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

This action having been duly tried before the Court, Honorable Sylvester J. Ryan, United States District Judge, presiding, and the Court having duly rendered its opinion dated September 12, 1955, containing its findings of fact and conclusions of law and directing dismissal of the complaint, without costs, and similar dismissal of the cross-claim of defendant, American-Hawaiian Steamship Company, against defendant, Isbrandtsen Company, Inc., it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiffs do have and recover nothing from defendants and that the compiaint herein be and the same hereby is dismissed on the merits, without costs, and it is further

ORDERED, ADJUDGED AND DECREED that the cross-claim of defendant, American-Hawaiian Steamship Company, against defendant, Isbrandtsen Company, Inc., be and the same hereby is similarly dismissed, without costs.

Dated, September 21, 1955.

/s/ SYLVESTER J. RYAN,
*U. S. D. J.*

Judgment entered September 21, 1955.

/s/ WILLIAM C. CONNELL,
Clerk.

[2]

## Opinion.

[SAME TITLE.]

RYAN, D. J. Plaintiffs seek in this action money damages in the amount of $203,639.09 which they claim because of defendants' improper shipment and transportation of a purchase caustic soda and the improper issuance and negotiation of two bills of lading relating thereto.

Plaintiffs are citizens and residents of Lucknow, India; Defendant Colorado Fuel and Iron Corporation is a corporation organized under the laws of the State of Colorado; defendant Isbrandtsen Company, Inc., is a corporation organized under the laws of the State of New York; and [3] defendant American-Hawaiian Steamship Company is a corporation organized under the laws of the State of New Jersey. There is complete diversity of citizenship between all plaintiffs and all defendants and the amount in controversy exceeding the sum of $3000, exclusive of interest and costs.[1] None of the parties questions the jurisdiction of this Court.[2]

Plaintiffs alleged in their complaint five causes of action: the first against Colorado for breach of contract; the second against all defendants for negligence in the performance of their various contractual obligations; the third against all defendants for fraud; the fourth against Isbrandtsen and American-Hawaiian for conversion; and the fifth against all defendants for the loss of 60,203.3 pounds of caustic soda which arrived in Bombay in 526 allegedly damaged drums. The first four alleged causes of action all arose out of the same transaction or occurrence and can conveniently be considered together. We will treat these allegations and the evidence submitted in support [4] of them as one claim determining whether

[1] 28 U. S. C. A. 1332(a)(2).

[2] S. M. P. 79.

plaintiffs can recover under any theory.[3] Plaintiffs' counsel has in addition presented his case in this manner.

The contract[5] between the plaintiffs and Colorado came about in the following manner: At the request of Colorado the New York Branch of the National City Bank of New York cabled its Bombay Branch on August 2nd, 1948, that Colorado had an export license for 4300 tons of caustic soda solid, 76% alkalinity, N. Y. & L. test, for immediate delivery at 9 cents per pound FAS Gulf Ports or 10.102 cents per pound CIF Bombay. The New York Branch asked the Bombay Branch to cable if it knew of a buyer who had an import license and who would be able to open a credit at once.[6] On the day following the Bombay Branch advised the New York Branch of the National City Bank that their contacts showed no interest in the Colorado offer, and Colorado was informed of this reply.[7] At the request of Colorado, on August 4th, 1948, the New York Branch cabled the Bombay Branch to continue their endeavors to arouse interest for all or part of the 4300 tons,[8] and on [5] August 5th, 1948, the Bombay Branch cabled the New York Branch as follows:

> "YOUR SIX OUR EIGHT MULKRAJ INTERESTED BUY UP TO TWO THOUSAND LONG TONS CAUSTIC FROM COLORADO PROVIDED PRICE CENT 9.50 PER POUND CIF BOMBAY AND QUALITY EQUAL TO NINETY-EIGHT PERCENT NOAH STOP WORKING."[9]

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[3] Fed. R. Civ. P. 15(b).

[4] *E. g.*, S. M. P. 70, 77-78.

[5] The law of the State of New York is being applied as to whether or not any contract was in fact made by the plaintiffs and Colorado, and as to the construction of that contract upon agreement of counsel for the respective parties. S. M. P. 80.

[6] Plaintiffs' Exhibit 1, Schedule A.

[7] Plaintiffs' Exhibit 1, Schedule B.

[8] Plaintiffs' Exhibit 1, Schedule C.

[9] Plaintiffs' Exhibit 1, Schedule D.

The plaintiffs admit the facts stated in this cablegram to be true; Colorado admits that the contents of the cablegram were communicated to it. On that same day (August 5th) the New York Branch cabled the Bombay Branch that Colorado's best price was 10 cents per pound CIF Bombay.[10] Plaintiffs admit that the contents of this cable were communicated to them. On August 6th the Bombay Branch cabled the New York Branch that plaintiffs insisted upon the 9 1/2 cent price, CIF Bombay, and Colorado admits that it was informed of the contents of this cable.[11] On August 6th, a Friday, at the request of Colorado the New York Branch cabled the Bombay Branch the following:

> "URGENT YOUR ELEVEN AT REQUEST COLORADO FUEL & IRON CORPORATION AND WITHOUT RESPONSIBILITY TO BANK ADVISE MULKRAJ [6] QUOTE COLORADO FUEL & IRON AGREE SALE TWO THOUSAND LONG TONS CAUSTIC SODA SOLID 76% ALKALINITY NY&L TEST PACKED STEEL DRUMS PRICE NINE AND ONE HALF CENTS PER POUND CIF BOMBAY PAYABLE U. S. DOLLAR IRREVOCABLE LETTER OF CREDIT STOP IN ORDER TO EXPEDITE VALIDATION OF EXPORT LICENSE NUMBER PLEASE HAVE BUYER CABLE CONFIRMATION STATING THEIR IMPORT LICENSE NUMBER AND FULL NAME ADDRESS DIRECT TO W. A. BARTLE CARE OF COLORADO FUEL & IRON CORPORATION 1616 EYE STREET WASHINGTON DC STOP HAVE SHIPPING SPACE MINIMUM FIVE HUNDRED TONS FROM NEW ORLEANS ON OR ABOUT AU-

[10] Plaintiffs' Exhibit 1, Schedule E.
[11] Plaintiffs' Exhibit 1, Schedule F.

GUST 22 AND BALANCE WILL BE SHIPPED FROM A GULF PORT BETWEEN SEPTEMBER 15 AND 20. STOP FOR YOUR INFORMATION IT IS IMPOSSIBLE FOR ANYONE OTHER THAN COLORADO FUEL & IRON CORPORATION TO OFFER CAUSTIC SODA OF U.S. ORIGIN TO INDIA AT NINE AND ONE HALF CENTS CIF BOMBAY AS COLORADO AT PRESENT HAVE EXCLUSIVE AUTHORIZED EXPORT LICENSE PLEASE REPLY EARLIEST UNQUOTE.'"[12]

[7] This cablegram was received at the Bombay Branch on August 9th, a Monday, and its contents were communicated to the plaintiffs. On the same day R.S. Dass Badhwar (care Laxmansons) cabled directly to Colorado the following:

"REFERENCE OUR NEGOTIATIONS 2000 TONS CAUSTIC SODA SOLID THROUGH NATIONAL CITY BANK NEW YORK BOMBAY AND YOUR ACCEPTANCE OUR OFFER AT 9.5 CENTS PER LB CIF INDIAN PORT OUR IMPORT LICENSE NUMBER 000417/48 VALID UP TO SEPTEMBER 22 STOP ESTABLISHING LETTER CREDIT YOUR FAVOR THROUGH NATIONAL CITY BANK ON NEW YORK STOP ARRANGE SHIPMENT ENTIRE QUANTITY IN ONE OR MORE LOTS TO CALCUTTA BEFORE ABOVE NOTED DATE STOP CABLE EXPORT LICENSE NUMBER.'"[13]

This cablegram was confirmed by R.S. Dass Badhwar by letter dated August 9th. This letter contains the following language:

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[12] Plaintiffs' Exhibit 1, Schedule G.

[13] Plaintiffs' Exhibit 1, Schedule J.

"* * *

"We also understand from our mutual intermediary that you will ship 500 tons by August 22, [8] 1948 from New Orleans-La and the balance from some port in one or more lots as is convenient to you, but you should complete the entire quantity before September 22, 1948 in any case.

"We have had a very sad experience of dealing with another U. S. firm of New York, who offered us June shipment of 800 tons Caustic Soda and believing on their cable we immediately established a letter of credit in their favor but till now, we have no news of the shipment of the goods. We are therefore rather cautious and if it had not been through the National City Bank of New York, Bombay we would have hesitated to deal with a firm whom we do not know. We trust you won't misunderstand our position. We have therefore to request you to fulfill the contract within the stipulated time and in case you fail in your part, you shall be liable to compensate us for the loss of commission and interest."

"* * *"[14]

[9] A subsequent passage of cables fixed Bombay and not Calcutta as the port of discharge.

On August 12th, 1948 Colorado cabled the plaintiffs:

"HOPE TO LOAD ABOUT 1000 TONS STEAMER JANE G. SWISSHELM LEAVING NEW ORLEANS ABOUT AUGUST 23 STOP WILL CABLE EXACT AMOUNT WHEN LETTER OF CREDIT DEFINITELY CONFIRMED WITH PROPER SHIPPING INSTRUCTIONS CANNOT PROCEED WITH SHIPMENT UNTIL DOCUMENTS PROPERLY PREPARED IN AC-

[14] Plaintiffs' Exhibit 1, Schedule K.

CORDANCE STOP NOW HAVE VALIDATED EXPORT LICENSE FOR 2000 TONS OF MULK-RAJ NUMBER 1385760."[15]

I find that the agreement between the plaintiffs and Colorado although initially requiring shipment of all of the caustic soda on or before September 22nd, 1948[16] was subsequently changed by the parties when the plaintiffs caused two letters of credit to be opened in favor of Colorado and when Colorado accepted payment under the letters of credit. The first letter of credit, which called for payment on one part of this shipment of caustic soda, provided that the bills of lading be dated not later than October 10th, [10] 1948;[17] the second letter of credit, calling for payment of the remainder of this shipment of caustic soda, provided that the bills of lading be dated not later than September 22nd, 1948.[18] Thus, plaintiffs by causing one letter of credit to be valid if bills of lading thereunder were dated before October 10th, 1948 and Colorado by accepting payment under that letter of credit agreed that shipment of one part of the caustic soda could be made as late as October 10th, 1948 (shipment of the other part to be before September 22nd, 1948).

In sum then, the contract between the plaintiffs and Colorado was for the sale of 2000 long tons of caustic soda of a specified type, CIF Bombay, India, at a price of 9 1/2 cents per pound, one part to be shipped not later than September 22nd, 1948, the other part not later than October 10th, 1948.

The claim in this suit is only as to some 1490 tons, the remainder or balance of the contract having been cancelled by the mutual consent of the plaintiffs and defendant Colorado.[19]

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[15] Plaintiffs' Exhibit 1, Schedule T.

[16] Plaintiffs' Exhibit 1, Schedules J and K.

[17] Plaintiffs' Exhibit 1, Schedules U and Z.

[18] Plaintiffs' Exhibit 1, Schedules AF and AH; see also Plaintiffs' Exhibit 1, Schedule AG.

[19] S. M. P. 35-37; Plaintiffs' Exhibit 1, Schedules BE and BF.

[11] The vessel on which the caustic soda was loaded (the S.S. Hawaiian) arrived at Bombay on February 28th, 1949, some six months after it had been loaded. To understand plaintiffs' contentions with respect to this delay, it is necessary that we examine somewhat the conditions affecting the maritime industry in 1948, a year of considerable and widespread labor unrest in that industry.

On June 14th, 1948, a threatened maritime strike on the East, Gulf and West Coasts was temporarily restrained, and subsequently enjoined for a full eighty-day period expiring September 2nd, 1948. Orders were made by this Court and the United States District Court for the Northern District of California pursuant to the "national emergency" provisions of the Labor Management Relations Act of 1947. Separate actions were filed on behalf of the United States against various maritime unions and ship operators, including Isbrandtsen and American-Hawaiian.[21] During this period collective bargaining negotiations looking to a settlement of the dispute were in progress. As a result of [12] these negotiations those connected with the maritime industry[22] were optimistic that the disputes would be satisfactorily settled before the

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[20] 29 U. S. C. A. 141 *et seq.*

[21] Plaintiffs' Exhibits 9 and 10; Civil Action No. 46-299, Southern District of New York.

[22] Throughout this opinion reference will be made to the testimony of various witnesses. Listed below are their names and positions:

1. *John Hansen Dalton* testified that at the time of his examination (October 21st, 1952) he was associated with Tidemann & Dalton, Inc., successor to Hansen & Tidemann, Inc.; that in 1948 he was a steamship agent and Vice President and Secretary of Hansen & Tidemann; that he was associated with Hansen & Tidemann since its formation in 1936; that he had been in the maritime industry since 1931 in the ports of New Orleans, La., and Galveston, Texas, except for the period between 1941 and 1945. Throughout the transactions involved in this suit Hansen & Tidemann acted as the agents of the defendant Isbrandtsen.

2. *Frederick R. Becker, Jr.*, testified that he was secretary-treasurer of Farrell Shipping Company; that he had been associated with that company since 1932, including the year 1948; that the company's business is that of export freight broker and forwarding agents; and that since 1936 Farrell Shipping Company has represented Colorado Fuel and Iron Corp.

expiration of the eighty-day injunction period.[23] This same optimism was shared by New York and New Orleans freight forwarders who continued to do business as usual and to book freight for July, August and September sailings.[24] It was in such a setting that Colorado, acting through its New Orleans freight forwarder, Farrell Shipping Co., entered into the affreightment contract of July 29th, 1948,[25] with the defendant Isbrandtsen for the transportation of 1000 tons of caustic soda from New Orleans to Bombay, India, on the S.S. Jane G. Swisshelm or

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3. *Robert L. Gray* testified that he was Vice President and Operating Manager of the American-Hawaiian Steamship Company.

4. *Frank H. Bain* testified that he was Atlantic Marine Superintendent of the American-Hawaiian Steamship Company.

5. *Joseph H. Masse* testified that he was master of the S. S. HAWAIIAN in August, 1948.

6. *Charles A. Kacocha* testified that he was master of the S. S. HAWAIIAN prior to August, 1948, and after the 8th or 9th of December, 1948.

7. *Ward Wire* testified that he was General Traffic Manager of Colorado.

8. *Siguard E. Simpson* testified that in September, 1948, he was Chief Clerk of Hansen & Tidemann and personally handled a large number of matters which related to the caustic soda in question.

9. *Charles J. Conlon* testified that he is a freight forwarder doing business under the name of Shippers Export Service Company in New York City, and that he had been in the freight forwarding business since 1928.

10. *Matthew S. Crinkley* testified that he was Executive Vice President of the Isbrandtsen Company, Inc.; that he had been with that organization for the twenty-five years last past; and that the matter in suit came under his over-all supervision.

11. *Robert T. Smith* testified that he was President of the Standard Stevedoring Company; that from January 1st, 1947, until September 17th, 1951, he was Vice President and General Manager of the New Orleans Stevedoring Company; and that he had been in the maritime industry thirty-eight years, the last fifteen of which being in New Orleans.

12. *Louis B. Morgan* testified that he was at the time of his deposition (November 3rd, 1954) the General Export Sales Manager of Colorado Fuel and Iron Corp., and that in 1948 he was second in command of the export department of that corporation.

[23] Testimony of Gray, S. M. P. 410-411; testimony of Bain, S. M. P. 428.

[24] Testimony of Conlon, S. M. P. 127, 145-146, 149, 156; testimony of Becker, S. M. P. 234-235.

[25] Plaintiffs' Exhibit 4 (Dalton deposition), Defendants' Exhibit B; S. M. P. 217.

other A-1 vessel, the scheduled sailing date of which was August 28th-30th, 1948, with shipside delivery required between August 19th-25th, 1948.[26] Conlon, a New York freight forwarder, testified that to arrange for a shipment of cargo of this size required a considerable period of intervening time.[27] Both he and Becker testified that it was very difficult to book freight space for a shipment of caustic soda because of the reluctance of shipping companies to handle a material possessing its physical characteristics.[28] [13] Becker said he met with this difficulty when he unsuccessfully tried to book the cargo with the Isthmian Steamship Company and other lines serving Bombay and that defendant Isbrandtsen was found to be the only carrier willing or able to undertake the shipment.[29]

On August 17th, 1948 and pursuant to a right reserved to it under the contract of affreightment[30] defendant Isbrandtsen through its agents, Hansen & Tidemann, notified Farrell Shipping Co., and the latter in turn notified Colorado, that the S.S. Hawaiian which concededly was an A-1 vessel, had been substituted for the S.S. Jane G. Swisshelm, with latest shipside delivery at New Orleans by September 2nd, 1948.[31] Upon the receipt of this advice, Colorado requested Farrell Shipping to increase the tonnage covered by the affreightment contract from 1000 to 1500 tons and, on August 19th, 1948 the lat-

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[26] See Defendant Colorado's Exhibit A.

[27] S. M. P. 143.

[28] S. M. P. 140, 146-147, 216; Plaintiffs' Exhibit 4 (Becker deposition), page 176. The difficulty in obtaining a ship to carry caustic soda is that this commodity eats away at its own container and the things around it, if permitted to do so, and it therefore cannot be stored with many other products when shipped (Plaintiffs' Exhibit 4 [Becker deposition], p. 223).

[29] Plaintiffs' Exhibit 4 (Becker deposition), pages 176, 179-180; Defendant Colorado's Exhibit A; S. M. P. 235-236.

[30] Plaintiffs' Exhibit 4 (Dalton deposition), Defendants' Exhibit B.

[31] Plaintiffs' Exhibit 4 (Becker deposition), page 194; S. M. P. 218.

ter did so by oral arrangement with Hansen & Tidemann, confirming such additional booking to its principal.[32]

Concerning the substitution of the S.S. Hawaiian, Becker testified that while he had been [14] advised by Hansen & Tidemann at the time of the original booking that the S.S. Jane G. Swisshelm was under bareboat charter to Isbrandtsen, he was not advised of the type of charter covering the substituted vessel and made no inquiry of Hansen & Tidemann with respect thereto as it was neither the custom nor the practice in New Orleans to do so.[33] Becker also testified that, prior to September 3rd, 1948, he did not know that the S.S. Hawaiian was owned by American-Hawaiian or that she was manned by a West Coast crew,[34] and that these were matters of no concern to him for the reason that his business dealings were with Isbrandtsen upon whom he relied and whom he felt to be a reliable company.[35] Ward Wire similarly testified that, prior to September 7th, 1948, he knew nothing about the crew or the charter of the Hawaiian.[36]

Having procured a firm commitment for the transportation of 1500 tons of caustic soda to Bombay, Colorado, between August 20th and 27th, 1948, proceeded to ship a total of 1490 tons by railroad from its plant at Ladora, Colorado, to New Orleans.[37] Meanwhile [15] on August 30th, 1948, the S.S. Hawaiian arrived at the Port of New Orleans from Houston, Texas, and, after bunkering, docked at Westwego Wharf No. 3 shortly after twelve noon on August 31st, 1948.[38] At one P. M. on the same day, loading of the caustic soda aboard the Hawaiian was

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[32] Plaintiffs' Exhibit 4 (Becker deposition), pages 189, 195; S. M. P. 221.

[33] S. M. P. 217-219, 280.

[34] S. M. P. 224, 257.

[35] S. M. P. 252, 257-258.

[36] S. M. P. 297.

[37] Plaintiffs' Exhibit 4 (Becker deposition), page 186; S. M. P. 293.

[38] Plaintiffs' Exhibit 4 (Becker deposition); Defendants' Exhibit J.

commenced by stevedores employed by Isbrandtsen, and was continued on September 1st and 2nd, 1948, on which latter date loading of the caustic soda was completed with the loading of 4799 drums containing a total of 1491.42 gross tons.[39]

It appears from the Mate's Daily Reports[40] that all of the caustic soda accounted for on the bills of lading was loaded into the Hawaiian prior to the strike. All of the witnesses testified to this effect excepting Captain Kacocha who thought that some of the caustic soda might have been loaded into the upper 'tween deck after the strike was over, but he had no recollection one way or the other.[41] Simpson, an eyewitness, testified that he left Hansen & Tidemann's office for Westwego at ten A. M. on September 3rd; that it took him about forty-five [16] minutes to get there; that when he arrived he saw no work going on; that he did see trucks on the dock but did not see any caustic soda.[42] I find that all caustic soda was in fact loaded aboard the Hawaiian prior to the strike. The stowage plan[43] indicates that caustic soda was to be loaded into lower holds 1, 2, 3 and 4 and some into the upper 'tween deck, and that automobiles destined for Basra were to be stowed above the caustic soda. Simpson testified that the caustic soda was placed in the lower holds because it was heavy cargo and because Bombay succeeded Basra on the Hawaiian's list of ports of call.[44] It was therefore planned that the autos would be unloaded at Basra without having to move the caustic

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[39] Plaintiffs' Exhibit 3 (Masse deposition); Plaintiffs' Exhibit 2 (Mate's Daily Reports); Plaintiffs' Exhibit 4 (Dalton deposition); Plaintiffs' Exhibit 2 (Stowage Plan); Plaintiffs' Exhibit 18 (Smooth Deck Log). The stowage plan was prepared after the HAWAIIAN was loaded. Plaintiffs' Exhibit 4 (Dalton deposition), page 80.

[40] Plaintiffs' Exhibit 4 (Dalton deposition); Plaintiffs' Exhibit 1.

[41] Plaintiffs' Exhibit 5, pages 8, 28.

[42] S. M. P. 388-389.

[43] Plaintiffs' Exhibit 4 (Dalton deposition); Plaintiffs' Exhibit 2.

[44] S. M. P. 369-370.

soda. It is noted in the smooth deck log[45] that at six P. M. on September 2nd, 1948 "three (3) nite gangs resume loading #2, 4 and 5 hatches, loading 'Basra' cases, chassis in all lower holds;" that at 10:30 P.M. on the same day #2 lower hold (containing caustic soda, with autos on top of the caustic soda) was finished and that the stevedores started loading Basra cargo in #2 lower 'tween deck; that all stevedore gangs knocked off [17] for supper at midnight and that at one A. M. "four (4) gangs resume loading 'Basra' in #1, 2, 4, 5 hatches." Simpson corroborated this by testifying that automobiles were being loaded on the night of September 2nd-3rd, and that the caustic soda had been loaded into those holds prior to that time.[46] Smith also corroborated this by testifying that all of the caustic soda was aboard the Hawaiian when the strike was called.[47] The loading certificates of the New York Board of Underwriters state that all of the caustic soda was carried below deck.[48] I find that all of the caustic soda was loaded aboard the Hawaiian by six P. M. on September 2nd, 1948.

The smooth deck log of the Hawaiian[49] shows that at three P. M. on September 2nd the stewards department left the ship to attend a union meeting and not return to the ship until three A. M. on September 3rd, when they returned to remove their personal effects. At 3:15 A. M. On September 3rd, 1948, the stewards of the ship went ashore and were "definitely on strike."[50] The loading of the cargo continued throughout the remainder of

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[45] Plaintiffs' Exhibit 18.

[46] S. M. P. 371.

[47] Plaintiffs' Exhibit 4 (Smith deposition), page 142.

[48] Defendant Isbrandtsen's Exhibits 1 and 4.

[49] Plaintiffs' Exhibit 18.

[50] See *supra*, Footnote 49.

that [18] night and until ten A. M. in the morning.[51] The engine room crew ceased working at that time, struck the vessel and refused to supply the steam necessary to drive the ship's winches so that cargo should be loaded.[52]

Plaintiffs have claimed that the caustic soda was loaded aboard the Hawaiian when it was in an unseaworthy condition: more particularly, that the Hawaiian was unseaworthy as it was without a proper crew. This claim is without foundation. Though the stewards left the ship prior to the completion of loading the caustic soda (by three hours) their services were unnecessary for the loading operation. Even if it be said that a strike by depriving a vessel of its crew renders the vessel unseaworthy there was no deprivation of crew until ten A. M. on September 3rd, some sixteen hours after all of the caustic soda was loaded. And even if it further be said that the deprivation of stewards aboard a merchant vessel renders it without a crew and in turn breaches the warranty of seaworthiness the facts demonstrate that the stewards did not [19] strike until 3:15 on the morning of September 3rd. When the stewards left the Hawaiian on September 3rd it was to attend a union meeting and whether or not they would strike was not known until the following morning after all of the caustic soda had been loaded aboard.

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[51] Captain Kacocha, who commanded the HAWAIIAN on the voyage prior to the one in issue and who rejoined the HAWAIIAN as master in December, 1948, testified that the Pacific Coast labor disturbance gave every indication of being settled, and that strike talk was a frequent conversation piece in the industry, but that on the voyage prior to the one on which the strike occurred neither ship's delegates nor union delegates talked with him with respect to their labor agreements. Plaintiffs' Exhibit 5, pages 5 and 39. Captain Masse, who was master of the HAWAIIAN during the interval Captain Kavocha was ashore, testified that he had no knowledge of an impending strike and that it "was a surprise to most everybody," and that the first notice he had that any of the crew would walk off the vessel was at three A. M. on September 3rd, when the stewards struck. Plaintiffs' Exhibit 4, pages 12, 28-29.

[52] The crew of the HAWAIIAN belonged to West Coast unions so that although agreement had been reached by East and Gulf Coast unions and ship operators it did not affect the crew of the HAWAIIAN, even though the ship was docked in a Gulf port.

Not knowing or being advised of the work stoppage of the ship's stewards, Farrell Shipping Company at 9:30 A. M. on September 3rd, delivered to Hansen & Tidemann Colorado's check in prepayment of the ocean freight charges in the amount of $32,848.72, and a runner for Farrell Shipping received, as had theretofore been requested, the two on board ocean bills of lading covering the shipment, which is thereupon forwarded to Colorado.[53]

Becker testified that he first learned of the strike of the crew of the Hawaiian in the early afternoon of September 3rd, but did not inform Colorado of it until September 7th, because "the situation was very unclear on September 3rd * * * It was a temporary situation and we were trying to see how it would progress, and then * * * there was a long weekend occasioned by the Labor Day holiday."[54] [20] Becker also testified that on or about August 18th, 1948, he learned that the maritime labor disputes involving the East and Gulf Coasts had been settled and that he had formed the opinion "there would be no trouble at New Orleans, there would be no strike there."[55] He further testified that, prior to the strike, he did not know to what unions the officers and crew of the Hawaiian belonged,[56] that no one told him that a strike was to be declared by the crew aboard the ship,[57] and that Farrell Shipping continued to book space right along for delivery to ships after September 1st, 1948.[58] Becker further said that he was dealing with Isbrandtsen and their agents and in August, 1948, did not know who owned the Hawaiian.[59]

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[53] Testimony of Becker, S. M. P. 223-225, 248-249; testimony of Simpson, S. M. P. 350-351, 385-386, 391; Plaintiffs' Exhibit 4 (Becker deposition); Defendants' Exhibit I. (That this latter exhibit is dated September 1st, 1948, is explained by Becker at pp. 211-212 of Plaintiffs' Exhibit 4.)

[54] S. M. P. 261-262; Defendant Colorado's Exhibit C.

[55] S. M. P. 229.

[56] S. M. P. 234.

[57] S. M. P. 234.

Ward Wire testified that the first he heard about a strike involving the Hawaiian was late September 7th or September 8th, when he received Becker's telegram advising that the vessel had been "delayed by strike of West Coast crew."[60] Word of the strike came as something of a surprise to Colorado's traffic department. K. B. Griffith, Colorado's Assistant Traffic Manager, wrote to [21] Farrell Shipping Company on September 10th:

"* * * * * *

"As a matter of curiosity I am unable to understand why this vessel is being picketed and will appreciate your enlightening me on the subject."[61]

Griffith was advised by Farrell Shipping on September 13th[62] that the strike was due to Isbrandtsen's chartering the Hawaiian from a West Coast line and that the vessel was manned by a crew belonging to a West Coast union who struck the vessel when a strike of their union commenced on the Pacific Coast. Louis B. Morgan testified that he had no knowledge of the strike aboard the Hawaiian prior to September 13th, and that no information concerning the strike appears in the files prior to that date.[63]. Colorado's New York export office by letter of September 20th, thereupon notified the plaintiffs of the delay in sailing the Hawaiian.[64] It wasn't until January 8th, 1949, after the dispatch of other communications in connection with the caustic soda,[65] that the plaintiffs protested the delay caused by the strike aboard the Hawaiian.[66]

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[59] S. M. P. 252-253, 257.

[60] S. M. P. 295; Defendant Colorado's Exhibit C.

[61] Defendant Colorado's Exhibit B.

[62] Defendant Colorado's Exhibit D.

[63] Plaintiffs' Exhibit 6.

[64] Plaintiffs' Exhibit 1, Schedule BC.

[65] Plaintiffs' Exhibit 1, Schedules BD, BE, BF and BB.

[66] Plaintiffs' Exhibit 1, Schedule BH.

[22] Plaintiffs claim that Colorado failed to notify them promptly of the fact that the Hawaiian was strike-bound. This claim is without substance. In light of the above chronology I find that plaintiffs were notified within a reasonable time after the strike and after the facts of an unclear situation could be had. It should also be noted that only two ships in the entire port of New Orleans were affected by the West Coast Strike, the Hawaiian being one of them.

Plaintiffs also claim that Colorado breached its duty to them by accepting the substitution of the Hawaiian for the Jane G. Swisshelm, since the expected sailing date of the Hawaiian was after the expiration of the eighty-day Taft-Hartley injunction whereas the sailing date of the Jane G. Swisshelm was before. Little merit lies in this contention since by the very terms of the letters of credit caused to be opened by the plaintiffs they were willing to accept shipment of the caustic soda by September 22nd for one part and October 10th for another.

Once the strike had been called it was not [23] possible either to sell the Hawaiian or to remove the caustic soda and forward it aboard some other vessel. Gray,[68] Crinkley,[69] Becker,[70] Dalton,[71] and Smith,[72] all testified that when the engine room gang struck the ship on September 3rd cargo could not be loaded or discharged by ship's tackle because there was no steam to operate the winches and equipment. The Hawaiian was regarded in the trade as a "hot ship."[73] Seamen and stevedores of non-striking unions would not work the vessel because in order to do

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[67] Plaintiffs' Exhibit 4 (Smith deposition), pages 121 and 160.

[68] S. M. P. 408-409.

[69] S. M. P. 328-330.

[70] S. M. P. 244.

[71] Plaintiffs' Exhibit 4, page 107.

[72] Plaintiffs' Exhibit 4, pages 146-148.

[73] Plaintiffs' Exhibit 4 (Gormley deposition), page 259.

so they would have had to cross picket lines and this it was well known in the trade they would refuse to do. Similarly for crane operators and others needed to unload the cargo. While the ship was on strike it was impossible to do anything with respect to loading, unloading or sailing her from port.

I hold that due and proper shipment was made when the caustic soda was loaded aboard the Hawaiian.

The contract called for the delivery of caustic soda CIF Bombay.[74] The caustic soda was fully loaded prior to the commencement of the strike. [24] In sales agreements the risk of loss follows the fictional "property right" to the goods.[75] In a CIF contract the "property" right passes to the buyer upon delivery to the carrier. Hence the property right to the caustic soda passed to the plaintiffs when the caustic soda was loaded aboard the S. S. Hawaiian, which was prior to the walkout, and the risk of loss also passed to the plaintiffs. (Plaintiffs do not claim that the documents were not actually presented.)

A court naturally hesitates to apply such concepts to a transaction where the parties are unaware of its legal significance. But here this was not the case. Early in the negotiations between the plaintiffs and Colorado there

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[74] The exchange of cables and correspondence which established the contract evidences a stated intent, if any, that a Gulf port, or more particularly New Orleans would be the point where the "property" in the caustic soda would pass from seller to buyer. New York Personal Property Law 99(1); *Cundill v. Millhauser Corp.*, 257 N. Y. 416, 178 N. E. 680 (1931); *Willits & Patterson v. Abekobei & Co., Limited*, 197 App. Div. 528, 189 N. Y. Supp. 525 (1st Dept. 1921); *Schapflocher v. Essgee Co. of China, Inc.*, 197 App. Div. 781, 189 N. Y. Supp. 498 (1st Dept. 1921); *cf. Warner, Barnes & Co., Limited, v. Warner Sugar Refining Co., et al.*, 117 Misc. 247, 192 N. Y. Supp. 151 (Sup. Ct. 1921), affd. *sub nom Warner-Barnes & Co., Ltd., v. Oriente Securities Co.*, 202 App. Div. 789, 194 N. Y. Supp. 987 (1st Dept. 1922). That this was a CIF transaction so merges with the conduct of the parties and the usages of the trade (New York Personal Property Law 99[2]) that it makes it incumbent upon this Court to examine further into this aspect of the contract to better determine the actual intent of the parties. *Cf. Dwane v. Weil, et al.*, 199 App. Div. 719, 192 N. Y. Supp. 393 (1st Dept. 1922), affd. 235 N. Y. 537, 130 N. E. 720 (1923).

[75] New York Personal Property Law 103.

was considerable trading over the price of the caustic soda and shipping arrangements. Colorado offered 4300 tons at nine cents per pound FAS Gulf Ports or 10.102 cents per pound CIF Bombay. The plaintiffs were willing to pay 9 1/2 cents per pound CIF Bombay. Colorado then wanted ten cents per pound CIF Bombay. The plaintiffs held fast to 9 1/2 cents per pound CIF Bombay and Colorado then met the plaintiffs' price, [25] CIF Bombay. These negotiations point to the fact that the plaintiffs were aware of the import of the terms like FAS and CIF.

The rationale of the rule that under a CIF contract "property" to the goods passes upon delivery to the carrier is that the cost of insurance and freight, in addition to the cost of the goods themselves is reflected in the contract price. Since then the buyer is really paying the cost of insurance and freight the "property" passes to him. Frequently buyers do not know they are bearing these charges and simply accept the price of-

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[76] *Mee, et al., v. McNider*, 109 N. Y. 500, 17 N. E. 424 (1888); *Warner, Barnes & Co., Limited, v. Warner Sugar Refining Co., et al., supra*, footnote 74; *Warner Bros. & Co., Limited, v. Israel*, 101 F. 2d 59 (2d Cir. 1939); cf. *Mora y Ledon, et al., v. Havemeyer, et al.*, 121 N. Y. 179, 24 N. E. 297 (1890); see *Seaver v. Lindsay Light Company*, 233 N. Y. 273, 276, 135 N. E. 329, 330 (1922), where the Court said:

> "The meaning of the letters c.i.f. in an executory contract is, and at the time the contract in question was made were, well understood in the commercial world. They mean the cost of the merchandise, insurance thereon, and freight charges to point of destination. (*Thames & Mersey Ins. Co., Ltd., v. U. S.*, 237 U. S. 19.) Unless there is something in a c.i.f. contract to indicate to the contrary, the seller completes his contract when he delivers the merchandise called for to the shipper, pays the freight thereon to point of destination, and forwards to the buyer bill of lading, invoice, insurance policy and receipt showing payment of freight. (*Mee v. McNider*, 109 N. Y. 500; *Smith Co., Ltd., v. Marano*, 267 Penn. St. 107; *Ireland v. Livingston*, L. R. 5 H. L. 395; *Klipstein v. Dilsizian*, 273 Fed. Rep. 473; Williston on Sales, Secs. 407, 408; Mechem on Sales, Vol. 2, Sec. 1736.)"

See also *Smith Co., Limited, v. Moscahlades, et al.*, 193 App. Div. 781, 183 N. Y. Supp. 500, 503 (1st Dept. 1920); *Madeirense do Brasil S/A v. Stulman-Emrick Lumber Co.*, 147 F. 2d 399, 402 (2d Cir. 1945), cert. denied 325 U. S. 861 (1945).

fered. In such circumstances, the rule would have little support in reason. In the case at bar the plaintiffs realized they were paying for the freight and insurance; without trading, they could have had the caustic soda at nine cents per pound, arranging for paying directly for the freight and insurance themselves. They appear no novices to commercial transaction, and understood the accepted commercial meaning of terms like FAS and CIF. They chose to pay the additional 1/2 cent per pound, i. e., nine and 1/2 [26] cents per pound flat for everything, goods, freight and insurance. There would be no point to insuring the caustic soda while aboard the vessel unless the plaintiffs had an interest in the caustic soda. Since they were the owners at that time, as between Colorado and themselves, the loss occasioned by the strike should properly be borne by them. I find that the parties to this contract intended that the terms CIF be given their normal and accepted commercial effect."[7]

Though our decision could rest there, another important ground is present. With respect to the second ground the issue is: As between the plaintiffs and Colorado under the terms of their contract who should bear the burden of the loss caused by a strike for which, admittedly, neither the plaintiffs nor Colorado was responsible. No undue delay is charged as to Colorado's actions before the walkout nor after its cessation. The only delay of consequence was due to the prolonged strike. I would hold that the seller-shipper is properly relieved of any loss plaintiffs were occasioned by this shipping strike.

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[7] For the purposes of clarity, perhaps it should be stated that in the circumstances presented in this case the fictional "property" right in the caustic soda passed at the same time that the parties intended responsibility for the goods to pass from seller to buyer, namely upon the seller's delivery of the caustic soda to the carrier. In effect, then, no legal fiction is being applied.

[27] Maritime strikes, authorized and unauthorized, occur quite frequently. They vary considerably in duration, from hours to weeks to months as did the strike considered at bar. The certainty of occurrence or duration of a strike is impossible to foretell. Most disputes are resolved without a strike. Most strikes are of brief duration. The results of negotiations cannot be foreseen. Shippers frequently do not know how long a strike is going to last when one is impending or confronting them.[78] If this walkout had lasted a few days or a week there would be no lawsuit here. The strike might have been settled before the strike deadline; it might have been postponed pending the outcome of further negotiations; when it occurred the force of it might have brought the contesting parties to a speedy resolution of their differences. To say otherwise would mean that shippers when aware that there might be a strike would have to forego all business until the situation became crystal clear. In the face of the many contingencies to hamstring sellers and shippers from proceeding to load and dispatch because of local and national waterfront and shipping labor [28] disturbances would virtually stymie foreign commerce.

At times it can be said that the parties to a contract can allocate the risk of strike as between themselves by making provision therefor in their contract, and in the absence of such a provision the loss better falls upon the shipper-seller as one of the risks incident to his business. This, some contend, is better than to saddle the occasional customer with the loss. Such reasoning is more applicable to strikes affecting the seller's plant or place of business which might be avoided by his own act, i. e., acquiescing in the employees' demands. Here, Colorado had no control at all over the striking crewmen. More important, contracting specifically to cover

[78] See S. M. P. 156, 273.

liability due to strike, though to be encouraged, frequently does not enter negotiations which are made with speed and haste, and which involve a speculative element, as did this one.[79] Rather than mechanically apply any fixed rule of law, where the parties themselves have not allocated responsibility, justice is better served by appraising all of the circumstances, [29] the part the various parties played, and thereon determining liability. This may well serve to explain any apparent division of authority in this area of the law.[80] We do not mean to hold, nor do we, that if, in the face of an impending labor disturbance affecting a shipment under contract, a seller ships having good reason to know that the shipment will not meet the dates contracted for he would be absolved of liability for damages. But here we have no such evidence. Though fraud was pleaded in the complaint, it was not pleaded with the particularity required by the Rules.[81] Ignoring this technical defect, there has been no proof of fraud at all in this case. I hold that Colorado and its agents, Farrell Shipping Company, acted in good faith and under the circumstances exercised reasonable business prudence.

The seller in such a situation is presented with another dilemma. If he fails to load a vessel in the face of an impending strike and the strike never materializes or is quickly terminated he may well be found in litigation defending his judgment against buyers who have suffered damage [30] because of the delay in booking the cargo elsewhere, or defending against carriers for breach of contracts of affreightment and demurrage.[82]

For us to require sellers to know with foresight how long a strike will last and to stop their commercial oper-

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[79] Plaintiffs' Exhibit 2 (Badhwar deposition), page 100.

[80] See 6 Williston on Contracts 1951A (1938).

[81] Fed. R. Civ. P. 9(b).

[82] See S. M. P. 274.

ations until the shipping picture is completely clear is just too much tightrope walking to require of anyone. Where there is a strike, delay caused thereby, and loss caused by the delay, the loss suffered by a party to a commercial contract is better borne by him upon whom it falls, absent, of course, malfeasance by any of the interested parties.

We turn now to the claims against Isbrandtsen and American-Hawaiian. As far as the plaintiffs or Colorado were concerned they were dealing with Isbrandtsen. Isbrandtsen had time chartered the vessel from American-Hawaiian.[83] If liability exists as to the defendant Isbrandtsen, American-Hawaiian might be liable to Isbrandtsen, which would, of course, be determined by the terms of the charter party. We will first deal with the actions of [31] Isbrandtsen and their agents making reference to American-Hawaiian where necessary, and then to the liability of American-Hawaiian, if any exists.

I find no liability on the part of Isbrandtsen for any losses which may have been sustained by the plaintiffs. Isbrandtsen was bound to deliver the bills of lading to the shipper, upon his demand, after receiving the caustic soda into its charge, i. e., as soon as this cargo was loaded aboard the S.S. Hawaiian. Becker testified that he asked for the bills of lading[84] and his testimony is corroborated by Simpson who said that someone in the office of Farrell Shipping phoned on September 2nd to determine when they could be expected to pick up the bills of lading.[85] Both witnesses testified that this was the normal practice in the industry.[86] I have found that all of the caustic soda was loaded aboard the Hawaiian by six P. M. on September 2nd, 1948, 15 1/2 hours before Simp-

[83] Plaintiffs' Exhibit 3 (Masse deposition); Defendant American-Hawaiian's Exhibit 1.

[84] S. M. P. 248.

[85] S. M. P. 351.

[86] S. M. P. 248, 351.

son delivered the bills of lading to a runner from Farrell Shipping.[87] Therefore Isbrandtsen through its agents Hansen & Tidemann made proper delivery of the bills of lading to [32] Farrell Shipping Company, as it was required by law to do.[88]

In addition, under the terms of the United States Carriage of Goods by Sea Act the carrier is expressly exempted from responsibility for loss or damage arising or resulting from "strikes or lockouts or stoppage of restraint of labor from whatever cause, whether partial or general; * * *"[89] The United States Carriage of Goods by Sea Act was expressly incorporated into the bills of lading in paragraph 1 thereof.[90]

It is appropriate at this point to consider plaintiffs' claim that defendants were in an unholy hurry to load their caustic soda aboard the Hawaiian. With this contention plaintiffs seek to persuade the Court that Colorado was remiss in its duties (whether they sound in tort or contract is not here important) seeking to load only so it could get the bills of lading and be able to collect under the letters of credit, and that Isbrandtsen was negligent, if not reckless, seeking to load only so it could collect the freight charges, and that thus Isbrandtsen is deprived of the exoneration provided [33] by the United

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[87] S. M. P. 350-351.

[88] United States Carriage of Goods by Sea Act 3(3); 46 U. S. C. A. 1303(3). This section provides:

"(3) After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading * * *"

[89] 4(2)(j); 46 U. S. C. A. 1304(2)(j). This section provides in full:

"(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

* * * * * * *

"(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general: *Provided*, That nothing herein contained shall be construed to relieve a carrier from responsibility for the carrier's own acts;"

[90] Plaintiffs' Exhibit 4 (Dalton deposition); Defendants' Exhibits F and H.

States Carriage of Goods by Sea Act 4(2)(j)[91] and is otherwise liable. As to Colorado there is no evidence that its agent, Farrell Shipping Company, had anything to do with the loading of the Hawaiian. That was Isbrandtsen's job, and we will deal with this phase of the case only in terms of the actions of Isbrandtsen and their agents.[92]

The principal evidence upon which the plaintiffs rely to support their contention surrounds the fact that the stevedores in loading the Hawaiian at New Orleans worked overtime.[92] Matthew Crinkley testified that Isbrandtsen hired the stevedores (New Orleans Stevedoring Company, Inc.) by contract and arranged for their services, but that it was the duty of Hansen & Tidemann to give the necessary cooperation and supervision to the

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[91] 46 U. S. C. A. 1304(2)(j). The proviso in this section (see footnote 89, *supra*) must refer to acts of the carrier for which in law the carrier can be attributed with some measure of fault. If any act of the carrier deprived it of the protection of the statute the section would be without meaning.

[92] The HAWAIIAN arrived in New Orleans at 11:06 A. M. on August 30th, 1948. Shortly thereafter the bar pilot boarded the vessel. At 1:34 P. M. the river pilot boarded and directed the ship up the Mississippi River. At 8:17 P. M. the HAWAIIAN docked at the Standard Oil Chalmette dock and proceeded to bunker at 10:35 P. M. After bunkering the HAWAIIAN went to Westwego Wharf No. 3 arriving around noon on the 31st of August. At 1 P. M. loading of the vessel commenced. On Friday, September 3rd, at ten in the morning loading ceased because of the strike, and the vessel was declared off hire, whereupon it was released to the Strachan Shipping Company on orders of the American-Hawaiian Steamship Company. It returned to the Westwego Wharf at 8:30 P. M. on December 9th, 1948, and loading was resumed at 8 A. M. on December 13th when the HAWAIIAN got its steam up (Plaintiffs' Exhibit 18; Plaintiffs' Exhibit 4 [Smith deposition], p. 159). The plaintiffs do not claim deviation nor do they claim that once the vessel left New Orleans after the strike had ended it did not prosecute that voyage promptly and diligently (S. M. P. 181-184). The vessel arrived in Bombay on February 25th, 1949, and commenced discharging cargo when it got into a wharf on February 28th, 1949. Some delay in getting into the wharf was experienced due to the congestion of the harbor (Plaintiffs' Exhibit 5 [Kacocha deposition], pp. 18-19). All the cargo consigned to the plaintiffs was discharged by the HAWAIIAN into the custody of the Bombay Port Trust on or before March 12th, 1949 (Plaintiffs' Exhibit 5 [Kacocha deposition], p. 20). All the cargo composing this shipment was received by the plaintiffs from the Bombay Port Trust on or before March 17th, 1949 (Plaintiffs' Exhibit 2 [Badhwar deposition]; Defendant Isbrandtsen's Exhibit C).

stevedoring that was done on Isbrandtsen's behalf.[93] The record is not entirely clear as to who ordered the overtime here considered, but it was either Isbrandtsen or their agents, Hansen & Tidemann.[94] In the course of loading the Hawaiian the stevedores worked some eighteen hours overtime, of which only three hours were worked during the period the caustic [34] soda was being loaded.[95] According to Dalton's testimony overtime was worked by the stevedores on the Hawaiian during the following hours: (A) Wednesday, September 1st, 1948—from 5 P. M. until 6 P. M. (B) Thursday, September 2nd, 1948—from 7 A. M. until 8 A. M.; from 5 P. M. until 6 P. M.; and from either 6 P. M. or 7 P. M.[96] until midnight. (C) Friday, September 3rd, 1948—from 1 A. M. until 10 A. M.

Plaintiffs further point to a letter dated September 2nd, 1948 from Robert T. Smith, Vice President and General Manager of the New Orleans Stevedoring Company to Dalton.[97] This letter is set out in full:

"Re: SS 'Hawaiian'

"Dear Mr. Dalton:

"This will confirm our telephone conversation of yesterday wherein we advised you that there is a possibility of being able to sail this vessel from New Orleans Saturday afternoon, weather permitting, at an overtime cost of approximately $1000.00 to $1500.00.

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[93] S. M. P. 327-328.

[94] See Plaintiffs' Exhibit 4 (Dalton deposition), pages 30-31.

[95] Plaintiffs' Exhibit 4 (Dalton deposition), page 32.

[96] According to the HAWAIIAN's smooth deck log (Plaintiffs' Exhibit 18) for September 2nd, 1948, the four-day gangs of stevedores knocked off for supper at 6 P. M. and at the same hour three night gangs commenced loading. Overtime was therefore worked on that date from 6 P. M., and not 7 P. M., until midnight.

[97] Plaintiffs' Exhibit 4 (Dalton deposition); Plaintiffs' Exhibit 3.

[35] "In giving you this estimate please bear in mind the difficulty we are encountering in loading the vessel. Due to her construction the parcels of boxed automobiles and the hogsheads of tobacco are confronting us with a serious stowage problem and we could possibly encounter unexpected delays in stowing the large boxes of automobiles and trucks and the progress we will make when we start loading them cannot be determined at this time.

"We are now chiefly concerned with getting all the cargo on board and in order to do so we cannot concern ourselves too much with despatch even though it could possibly mean a financial loss to ourselves as we understand the gravity of the situation should any cargo be shut out."

Taking this document at its face, it seems that Dalton and Smith had a telephone conversation on September 1st with respect to what it would cost to work the Hawaiian overtime. Smith advised Dalton of the cost and confirmed his advices on the day following with this letter. The major [36] part of the overtime worked was from six P. M. on September 2nd until the crew of the Hawaiian refused to supply steam at ten A. M. on the morning of September 3rd.[98] At 1:07 P. M. on September 2nd, a telegram addressed to Hansen & Tidemann for Captain Masse was received in the New Orleans office of Western Union.[99] This telegram was delivered to Hansen & Tidemann and in the regular course of business copies were typed and the original telegram and

[98] It was Smith's testimony that his letter of September 2nd was written in good faith and expressed his honest view in voicing the hope that the HAWAIIAN could leave New Orleans on September 3rd, and that overtime is a quite normal occurrence in the shipping industry (Plaintiffs' Exhibit 4 [Smith deposition], p. 158).

[99] Plaintiffs' Exhibit 4 (Dalton deposition); Plaintiffs' Exhibit 4.

either two or three copies were given to Captain Masse.[100] It was never elicited from Dalton whether or not he had any personal knowledge of that telegram. In any event some one or more of his employees had knowledge of it, and that knowledge is chargeable to him.[101] Taking these facts from the vantage point most favorable to the plaintiffs we have this picture: Hansen & Tidemann, fully conscious that the eighty-day injunction period was ending on September 2nd, 1948, were exceedingly anxious to have the Hawaiian loaded as quickly as possible. They had knowledge sometime in the afternoon of the 2nd that a strike was imminent if only by virtue of Gray's telegram to Masse instructing Masse as to the procedure [37] to follow if a strike was not averted.[102] In an effort to get the ship to sea before a strike was called they ordered the Hawaiian to be worked through the night of September 2nd in order to beat the strike deadline.[103] The question thus presented with the evidence so viewed is whether this was the exercise of due diligence and sound business judgment or whether it was negligence or recklessness so as to remove from the carrier the cloak of immunity with which 4(a)(j) of the United States Carriage of Goods by Sea Act enshrouds it. I hold that even if the

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[100] Plaintiffs' Exhibit 4 (Dalton deposition), page 50.

[101] Simpson testified that he arrived at the office of Hansen & Tidemann at eight A. M. on September 3rd, issued the bills of lading at 9:30 A. M., and saw Gray's telegram to Masse. The question was never put to him as to whether he saw the telegram prior to or after delivering the bills of lading to Farrell Shipping's runner.

[102] It was Gray's testimony that up to the time of the strike he and American-Hawaiian were hopeful that a strike could be averted; that during the period the injunction was in force American-Hawaiian operated on the theory that there would be no strike; that on September 2nd the unions and ship operators had a meeting to resolve their differences; that at that time there was agreement on some things; that negotiations had been going on for some time and continued after the strike was declared; that a Mr. Plant, Vice President of Operations of American-Hawaiian, told him on September 2nd that the labor situation didn't look too good; and that the telegram was sent to Captain Masse in the event a strike did occur, but that he had no actual knowledge that there would be a strike (S. M. P. 415 *et seq.*).

[103] See Plaintiffs' Exhibit 4 (Smith deposition), page 154.

evidence were so viewed loading the Hawaiian in the manner in which it was loaded was not reckless or negligent conduct. As with the shipper it is too much to require of the carrier that it wait until a strike situation becomes crystal clear before loading a vessel. Customers want their goods. Hindsight now reveals to us that this strike lasted quite a long time, [104] and it was, furthermore, a reasonable estimate of the situation to believe that the vessel could be loaded before the crew stopped supplying the steam.[105] (Two observations should be noted: [1] Plaintiffs would have us believe that all Hansen & Tidemann [38] sought to accomplish was to have the caustic soda loaded before the expiration of the injunction period, thereby enabling themselves to collect the freight charges and enabling Colorado to collect under the bills of lading in the event a strike did occur. Plaintiffs have not introduced any proof whatsoever of such devious conduct, or that any anxiety on the part of Hansen & Tidemann to load the vessel was solely for the purpose of collecting with respect to the caustic soda. Most favorably viewed, the proof points only to an anxiety to load all of the New Orleans cargo aboard the Hawaiian and get it out of port as quickly as possible or to go to sea before a strike leaving some cargo destined for the Hawaiian on the wharf.[106] [2] The other observation is that although the injunction ended September 2nd, on September 1st Dalton and Smith were talking in terms of getting the Hawaiian to sail by Saturday, September 3rd. This would indicate that overtime was being considered and was finally utilized for reasons other than beating the strike deadline, e.g., to save on the ship's operating expenses.[107])

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[104] Plaintiffs' Exhibit 4 (Smith deposition), page 155.

[105] See Plaintiffs' Exhibit 4 (Smith deposition), page 170.

[106] Captain Masse testified that the HAWAIIAN was about two-thirds loaded when the engine room gang struck. Plaintiffs' Exhibit 3, page 13.

[107] See Plaintiffs' Exhibit 4 (Dalton deposition), page 105; Plaintiffs' Exhibit 5 (Kacocha deposition), page 57.

[39] However, with the evidence in its proper posture, Hansen & Tidemann on the afternoon of September 2nd are confronted by a dilemma. The Hawaiian is in the process of being loaded. The stewards have gone off to a union meeting; the Taft-Hartley injunction ends at midnight and the West Coast unions and ship operators have not yet reached agreement; Gray's telegram to Masse is received instructing him on what to do if a strike occurs; the vessel is about one-third loaded. Things don't look any too good. Should loading be stopped (and perhaps unloading commence) or should the Hawaiian be worked around the clock in an endeavor to beat the actual strike? If the loading is stopped the caustic soda will be aboard when the strike is declared, if one is declared. It may be of short or long duration, but during that period it will be impossible to remove the caustic soda. The consignee may or may not get his cargo when he needs it. If the decision is to start unloading there will be considerable difficulty booking the caustic soda on another ship. It is a touchy commodity, and another ship may or may not be had in [40] time. If the loading is rushed the Hawaiian may be able to get to sea before the strike, if there is one. The ship should be completely loaded some time during the night of Septemper 3rd-4th. The stewards haven't really struck; they're just talking about it in the union hall. If the caustic soda is to stay aboard because of difficulty in getting another ship it might be worth the effort to try to get the Hawaiian to sea. The East and Gulf Coast unions and ship operators have agreed to terms and maybe the West Coast unions and operators will do likewise within a short time. The unions may not strike even after the expiration of the injunction because agreement may be near, and if they do strike it may not be for a long time. What as a reasonable businessman showing proper regard for the rights of consignees should

be done? There is not much time, quick thinking is called for, and a decision must be reached. This Court cannot say that to continue with the loading as fast as possible in an attempt to get the Hawaiian to sea before a strike demonstrates the absence of due care. Hindsight provides a better view than foresight. But as the facts were, to proceed with loading with all possible dispatch was a reasonable decision.

[41] This view of the situation applies all the more to the actions of Captain Masse, master of the Hawaiian, when hours later he was confronted with the strike of the stewards at 3:15 A. M., on September 3rd. His decision not to stop the charterer from loading was proper under the circumstances.

For the law to demand that a carrier halt operations to await the outcome of imponderables, or to prescribe that only regular time be worked when a strike is threatened is to substitute a judge's business judgment for that of a businessman expert in the industry. The ordering of overtime was done in good faith, to get the Hawaiian loaded and to sea before any walkout occurred. The decision was a reasonable one under the circumstances and might have succeeded. A day or two before the crew struck it was reasonable to believe that the Hawaiian would either be able to get to sea before the crew struck or that if a strike was not averted before the vessel was fully loaded the strike would not be of the very long duration we now know it was. That this view of the matter did not prove to be successful makes it no more [42] imprudent seven years after the event than it was at the time, and certainly does not turn that conduct into a legal claim. And where only three hours of overtime were spent in the loading of plaintiffs' cargo, the force of their contention loses much of its vitality.[108]

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[108] See *The Maui*, 113 F. 2d 1018, 140 A. M. C. 1299 (9th Cir. 1940), *cert. denied* 311 U. S. 709 (1940); *The Toronto*, 174 Fed. 632 (2d Cir. 1909); 4 Williston on Contracts 1095 (1936).

Neither do we think that Isbrandtsen or its agents, Hansen & Tiedemann, were remiss in their legal obligations in delivering the bills of lading for the caustic soda to Farrell Shipping Company after the Hawaiian's stewards went on strike. Simpson gave the bills of lading to Farrell Shipping's runner at 9:30 A. M. on September 3rd, the engine room crew stopped supplying steam at ten A. M., thereby preventing any further loading, but the ship's stewards department were ashore "and definitely on strike" at 3:15 A. M.[109] Neither Becker nor Simpson knew anything of the strike aboard the Hawaiian until the crew stopped providing steam. Was Hansen & Tidemann required to withhold issuing the bills of lading once there was any sort of strike aboard the Hawaiian, whether they actually knew of it or not? We think not. The carrier [43] was required to issue the onboard bills of lading once the caustic soda had been stowed in its holds. The only option it enjoyed in the face of the impending strike was to refuse to load at all. Once it did load it was required to issue the bills of lading.[110]

As to American-Hawaiian it had no knowledge of the sale of the caustic soda nor any interest in the letters of credit or the proceeds thereof. It had no knowledge or interest in the negotiations between the shipper and Isbrandtsen nor in the arrangements between the two for the transportation of the goods. The booking agreement and delivery orders were signed by agents for the charterer, and Farrell Shipping, the forwarder and agent for Colorado. The bills of lading according to the testimony were prepared by Farrell Shipping Company and were signed by Isbrandtsen's agent. The goods were placed in the vessel's holds by the charterer's stevedores. Whether or not to declare the ship off hire was

[109] Plaintiffs' Exhibit 18.

[110] United States Carriage of Goods by Sea Act 3(3); 46 U. S. C. A. 1303(3).

at the option of the charterer. Until that option was exercised, strike or no strike, [44] the owner was subject to the order of the charterer with respect to the receipt and transportation of cargo.

All that connects American-Hawaiian directly with the plaintiffs is the charter party, i. e., the contract of carriage. Plaintiffs claim that American-Hawaiian was negligent in not refusing to accept the cargo tendered and loaded aboard the Hawaiian. To have refused the cargo is all that could have been done by American-Hawaiian. Actions must be judged at the time and in the circumstances of late August and early September, 1948. No one knew what the eventual outcome of the negotiations would be. If American-Hawaiian had refused to accept the cargo and the strike had not occurred or lasted only a short time, this Court might well be determining a case of breach of contract brought by the shipper and charterer against American-Hawaiian for refusal to accept the cargo. Masse's decision to take cargo aboard even after the stewards struck was reasonable, as was the decision to accept the cargo in the first place.

The collective bargaining that was being had was between all West Coast ship operators on [45] the one hand and all West Coast unions on the other. American-Hawaiian might have capitulated on its own and the unions might have worked American-Hawaiian vessels alone among West Coast operators. However, the industry is not run that way. The strength the unions have by their number is balanced by the strength the operators have in bargaining as a unit. It is not for this Court to condemn this practice and saddle upon American-Hawaiian any loss plaintiffs might have sustained because they did not on their own come to terms with the unions.

In the event liability were found as to either Isbrandtsen or American-Hawaiian the charter party would con-

trol the manner of distributing that liability as between them. Since no liability is present we need not investigate the relationships created by the charter party.

Although in this opinion we have dealt with the merits of all of the plaintiffs' contentions we deem it advisable to pass upon the various defenses of the defendants relating to statutes of limitation. In our view of the matter plaintiffs' claims against [46] the carriers are grounded in the federal law affecting water carriers in foreign commerce, thereby making applicable the United States Carriage of Goods by Sea Act.[111] Once the stevedores hired by Isbrandtsen started loading the caustic soda into the holds of the Hawaiian the goods were no longer merely "awaiting shipment"[112] and the caustic soda was then in the custody of the carrier. Plaintiffs' claims against Isbrandtsen and American-Hawaiian largely relate to this period. The one-year limitation on the bringing of actions contained in the United States Carriage of Goods by Sea Act is applicable to these claims.[113] Because we believe this to be a federal matter, under the Supremacy Clause,[114] it is essentially unnecessary for this Court to determine the applicability and effect of state statutes of limitation or prescription, and for the same reason *Guaranty Trust Co. v. York*[115] would appear to have no application to this case.[116]

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[111] *Mackey, et al., v. U. S.*, 197 F. 2d 241 (2d Cir. 1952), *aff'd.* 83 F. Supp. 14 (S. D. N. Y. 1948); see the United States Carriage of Goods by Sea Act 2, 3(2), 46 U. S. C. A. 1302, 1303(2).

[112] Plaintiffs' Exhibit 4 (Dalton deposition); Defendants' Exhibit B, paragraph 6.

[113] United States Carriage of Goods by Sea Act 3(6); 46 U. S. C. A. 1303(6).

[114] U. S. Const., Art. VI.

[115] 326 U. S. 99 (1945).

[116] "We put to one side the considerations relevant in disposing of questions that arise when a federal court is adjudicating a claim based on a federal law (citing cases). Our problem touches transactions for which rights and obligations are created by one of the States, and for the assertion of which, in case of diversity of the citizenship of the parties, Congress has made a federal court another available forum." *Guaranty Trust Co. v. York*, 326 U. S. 99, 101 (1945).

The language of 3(6),[117] the limitations provision, that the carrier be discharged from liability "in respect of loss or damage" is broad enough to encompass plaintiffs' claims of negligent [47] delay, negligence in doing any loading at all, fraud and conversion (if they had been proved). The Supreme Court had occasion to pass upon a similar problem of construction in *New York, Philadelphia & Norfolk Railroad Company v. Peninsula Produce Exchange of Maryland*,[118] and said:

> "The words 'any loss, damage or injury to such property,' caused by the initial carrier or by any connecting carrier, are comprehensive enough to discharge a carrier's duty with respect to any part of the transportation to the agreed destination."[119]

All of the caustic soda was delivered into the custody of the Bombay Port Trust by March 12th, 1949.[120] All of the caustic soda was received by the plaintiffs from the Bombay Port Trust by March 17th, 1949.[121] No written notice of any loss or damage was given to Isbrandtsen or their agents within the time specified in the United States Carriage of Goods by Sea Act 3(6).[122] The complaint in this suit was not filed until October 27th, 1950. More than nineteen months [48] elapsed between the time of delivery to the plaintiffs and the bringing of the action. The one-year limitation of actions contained in the United States Carriage of Goods by Sea Act 3(6)

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[117] "In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: * * *"

[118] 240 U. S. 34 (1915).

[119] At page 38.

[120] Plaintiffs' Exhibit 5 (Kacocha deposition), page 20.

[121] Plaintiffs' Exhibit 2 (Badhwar deposition); Defendant Isbrandtsen's Exhibit C.

[122] 46 U. S. C. A. 1303(6).

bars the plaintiffs from whatever remedy they might have been entitled to with respect to their claims against the carriers.

If, however, it be thought that plaintiffs' claims against the carriers and the rights they contend have been violated are state created, then we feel that whatever plaintiffs' rights may have been with respect to any alleged negligence, fraud or conversion by either Colorado or the carriers they have been extinguished. Which brings us to the question of what is the applicable law? This Court in determining state created rights must apply the rules of conflict of laws that the Courts of the State of New York would apply.[123] Under its conflict of laws principles the substantive law that the New York courts would look to on the negligence, fraud and conversion claims would appear to be the *lex loci delicti*.[124] In the case before us that would be the law of the State of Louisiana. Were we free to determine this of [49] our own choice the result would be the same, as Louisiana was the state in which the acts complained of principally occurred. It was the focus of activities and the place of paramount contacts.[125] Viewing this another way, since we as a federal court are dealing with statutes of limitation and of prescription concerning state created substantive rights we are required to apply the law that would be applied as if this suit were brought in a court of the State of New York and in a manner so as not to affect the outcome of the litigation simply because the parties are in a federal forum.[126] By the application of 13 of the New

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[123] *Klaxon Co. v. Stentor Electric Manufacturing Co., Inc.*, 313 U. S. 487 (1941).

[124] *Poplar v. Bourjois, et al.*, 298 N. Y. 62, 80 N. E. 2d 334 (1948); *Coster v. Coster*, 289 N. Y. 438, 46 N. E. 2d 438 (1943); *Cherwien v. Geiter*, 272 N. Y. 165, 5 N. E. 2d 185 (1936).

[125] See Cheatham, Goodrich, Griswold and Reese, Cases and Materials on Conflict of Laws 420, *et seq.* (3rd Ed. 1951).

[126] *Guaranty Trust Co. v. York*, 326 U. S. 99 (1945).

York Civil Practice Act[127] we are referred to the statutes of limitation and of prescription of the State of Louisiana. Louisiana follows the civil rather than the common law, and according to its law statutes of prescription extinguish the eright rather than in the ordinary case at common law bar the remedy.[128] However, in terms of the meaning to litigants the effect is the same. Article 3536 of the Louisiana Civil Code provides that actions "resulting from offenses or quasi offenses" are prescribed within one year.[129] What are regarded [50] in the State of Louisiana as offenses and quasi offenses are what the common law denominates as torts. The Supreme Court of Louisiana has held that this one year period of prescription applies to actions in negligence,[130] to actions in fraud,[131] and we take the opinion and judgment of the Court of Appeals for the Fifth Circuit in *Colley v. Canal Bank & Trust Company*[132] as expositive of the law of Louisiana that Article 3536 applies to actions for conversion.

Plaintiffs urge that Article of the Louisiana Code of Practice treats statutes of limitation and of prescription

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[127] "13. Limitation where cause of action arises outside of the State. Where a cause of action arises outside of this state, an action cannot be brought in a court of this state to enforce such cause of action after the expiration of the time limited by the laws either of this state or of the state or country where the cause of action arose, for bringing an action upon the cause of action, except that where the cause of action originally accrued in favor of a resident of this state, the time limited by the laws of this state shall apply. * * *"
Plaintiffs herein are not residents of the State of New York.

[128] Compare *DeBouchel v. Koss Const. Co., Inc., et al.*, 180 La. 615 157 So. 270 (1934) with *Wood & Selick v. Compagnie Generale Transatlantique*, 43 F. 2d 941 (2d Cir. 1930).

[129] "Art. 3536: The following actions are also prescribed by one year:

"That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses or quasi offenses."

[130] *Sima v. New Orleans Ry. & Light Co.*, 134 La. 897, 64 So. 823 (1914).

[131] *Thomas v. Whittington, et al.*, 127 La. 551, 53 So.

[132] 159 F. 2d 153 (5th Cir. 1947).

as procedural and to be governed by the *lex fori*,[133] and therefore even if New York Civil Practice Act 13 refers over to the Louisiana prescriptive statute, Louisiana refers the matter back to New York creating in effect a *renvoi* situation. Whether the New York rule of conflict of laws is that New York courts are required to look only to the substantive law of the *lex loci delicti* or whether it is that New York courts must look to both the substantive and conflicts law of the *lex loci delicti* need not concern us in the light [51] of the language of 13 of the New York Civil Practice Act and the construction the New York courts have given it.[134] The policy motivating this section is to preclude persons from coming into New York courts to sue on a foreign cause of action which would be barred in the foreign jurisdiction, i. e., permitting a suit to proceed in New York when it would be barred if brought in the appropriate forum.[135] New York would therefore apply the Louisiana statutes of prescription without regard to Article 13 of the Louisiana Code of Practice.[136]

Little need be said of the plaintiffs' claim of damage to some 60,000 pounds of caustic soda. There is no evi-

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[133] "The forms, the effects and the prescription of actions, are governed by the law of the place where they are brought; but contracts are governed by the law of the place where they were entered into."

[134] To create a renvoi situation here requires more than this. It is necessary to say that the New York conflicts rule is that it will look to the state of the *lex loci delicti* and examine its substantive law, its law with respect to conflict of laws and its law with respect to statutes of limitation. Absent a specific statutory mandate New York adheres to the distinction between substantive and procedural matters and in general considers statutes of limitation procedural and going to the remedy, therefore to be governed by the law of the forum. However, in this case we have an explicit provision, 13 of the New York Civil Practice Act, to construe. Such a borrowing statute is in reality a legislative determination of the rule of conflict of laws to be applied when a question arises as to the applicable statute of limitation.

[135] See *National Surety Company v. Ruffin*, 242 N. Y. 413, 417, 152 N. E. 246, 247 (1926).

[136] The question of the relationship of statutes of limitation and applicable law in admiralty causes was recently extensively analyzed and considered in *Bournias v. Atlantic Maritime Co., Ltd., et al.*, 220 F. 2d 152 (2d Cir. 1955).

dence indicating that there was any physical damage to the 526 drums when they were delivered into the custody of Isbrandtsen. In fact, the two on board bills of lading issued by Isbrandtsen covering the entire 4799 drums shipped noted no exceptions and acknowledged receipt of the goods "in apparent good order and condition."[137] In other words they were clean bills of lading and as such constituted *prima facie* proof that the drums were in good order and condition at that time.[138] [52] Thus plaintiffs' claim must be limited solely as one for cargo damage and is clearly time barred.[139]

The complaint is dismissed without costs. Since there is no liability on the part of Isbrandtsen to the plaintiffs, the cross-claim of American-Hawaiian against Isbrandtsen is similarly dismissed.

Submit judgment.

August , 1955.

*U. S. D. J.*

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[137] Plaintiffs' Exhibit 1, Schedules AO and AS.

[138] See 33 A. L. R. 2d 867 (1954) for a collection of cases.

[139] United States Carriage of Goods by Sea Act 3(6); 46 U. S. C. A. 1303(6).

## Plaintiffs' Exhibit 1 (In Part).

*(Stipulation of Facts Identifying Documents.)*

[Same Title.]

It is hereby stipulated and agreed by and between the undersigned attorneys for the respective parties hereto that:

1. The documents which are attached hereto as "schedules" with alphabetical designation are hereby admitted to be true and correct copies of the documents respectively designated and described below;

* * * * * * *

3. Any facts stated below with respect to any described document are also deemed to be admitted for all purposes in this action;

* * * * * * *

6. The said documents are as follows:

*Schedule A:* Cablegram sent by The National City Bank of New York, New York Branch, to the National City Bank of New York, Bombay Branch, on August 2, 1948, at the request of The Colorado Fuel and Iron Corporation.

*Schedule B:* Cablegram sent by said National City Bank, Bombay Branch, to said National City Bank, New York Branch, on August 3, 1948, the contents of which were communicated to The Colorado Fuel and Iron Corporation.

* * * * * * *

*Schedule P:* Cablegram from Colorado Fuel and Iron Corporation, 500 Fifth Avenue, New York, to Mulkraj Brothers and Badhwar care Citibank, Bombay, sent August 10, 1948, and received August 11, 1948.

* * * * * * *

*Plaintiffs' Exhibit 1 (in Part)*

*Schedule AA:* Cablegram from W. A. Bartle, New York, to Mulkraj Brothers and Badhwar care Citibank, Bombay, sent August 19, 1948, and received August 20, 1948.

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*Schedule AD:* Cablegram from Colorado Fuel and Iron Corporation, New York, to Laxmansons, Lucknow, sent and received on August 26, 1948.

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*Schedule AF:* Cablegram from Laxmansons, Lucknow, to Wickspen (cable and telegraphic address of The Colorado Fuel and Iron Corporation) care Colorado Fuel and Iron Corporation, New York, sent and received August 26, 1948.

* * * * * * *

*Schedule BC:* Letter dated September 20, 1948, from The Colorado Fuel and Iron Corporation, New York, signed M. R. Rosse, General Export Sales Manager, to Mulkraj Bros. & Badhwar, Lucknow, sent on or about September 20, 1948, and received on or prior to September 27, 1948.

*Schedule BD:* Letter dated September 27, 1948, from Mulkraj Bros. & Badhwar, Lucknow, signed R. S. Dass Badhwar, Partner, to Messrs. The Colorado Fuel & Iron Corporation, 500 Fifth Avenue, New York, sent on or about September 27, 1948, and received October 4, 1948.

*Schedule BE:* Cablegram from Colorado Fuel and Iron Corporation, New York, to Laxmansons, Lucknow, sent and received on October 9, 1948.

*Schedule BF:* Cablegram from Laxmansons, Lucknow, to Colorado Fuel and Iron Corporation, New York, sent on October 9, 1948, and received on October 11, 1948.

* * * * * * *

*Plaintiffs' Exhibit 1 (in Part)*

*Schedule BH:* Letter dated January 8, 1949, from Mulkraj Bros. & Badhwar, Lucknow, signed R. S. Dass Badhwar, Partner, to M/S Colorado Fuel & Iron Corporation, 500 Fifth Avenue, New York, sent on or about January 8, 1949, and received January 17, 1949.

*Schedule BI:* Letter dated January 12, 1949, from Mulkraj Bros. & Badhwar, Lucknow, signed R. S. Dass Badhwar, Partner, to M/S. Colorado Fuel & Iron Corporation, 500 Fifth Avenue, New York, sent on or about January 12, 1949, and received January 18, 1949.

*Schedule BJ:* Letter dated March 15, 1949, from The Colorado Fuel and Iron Corporation, Denver, Colorado, signed N. H. Orr, Vice President, to Mulkraj Bros. & Badhwar, Lucknow, sent on or about March 15, 1949, and thereafter received.

Dated, New York, N. Y., November 30, 1950.

DUNN & ZUCKERMAN
By: JAMES F. DUNN
Attorneys for Plaintiffs
RATHBONE, PERRY, KELLEY & DRYE
By: FRANCIS S. BENSEL
Attorneys for Defendant
The Colorado Fuel and Iron Corporation

*Plaintiffs' Exhibit 1 (in Part)*

*Schedule A.*

COLORADO FUEL & IRON CORPORATION HAS EXPORT LICENSE 4300 TONS CAUSTIC SODA SOLID 76% ALKALINITY N.Y. & L. TEST FOR IMMEDIATE DELIVERY AT NINE CENTS PER POUND FAS GULF PORTS OR 10.102¢ PER POUND CIF BOMBAY PACKED 700 POUND STEEL DRUMS STOP PLEASE CABLE REPLY EARLIEST NAME BUYER POSSESSING IMPORT LICENSE AND ABLE OPEN CREDIT AT ONCE COMPANY URGENTLY INTERESTED COMPLETING TRANSACTION STOP ALSO CABLE IMMEDIATELY TREND MARKET PRICES CAUSTIC SODA STOP THIS HAS NO REFERENCE YOUR CABLE NUMBER EIGHT.

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*Schedule B.*

YOUR TWO CAUSTIC SODA 98/99 PERCENT READY DELIVERY RUPEES FIFTY PER HUNDRED WEIGHT MONTH AGO WAS RUPEES EIGHTYFIVE AND TRADE FORESEES POSSIBLE FURTHER DECLINE RUPEES TEN NO FORWARD QUOTATION AVAILABLE STOP SPECULATIVE ELEMENT SELLING IN VIEW COMBINATION MONSOON WEATHER SHORTAGE PROTECTED STORAGE SPACE EXPECTED FURTHER SUBSTANTIAL ARRIVALS POSSIBILITY PURCHASING FROM EUROPE AT PRICES BELOW AMERICAN AND UNDER OPEN GENERAL IMPORT LICENSE FOR SOFT CURRENCY AREAS STOP SO FAR OUR CONTACTS SHOW NO INTEREST COLORADO FUEL OFFER SAYING AMERICAN 98/99 PERCENT QUALITY BEING OFFERED BETWEEN NINE AND TEN CENTS CIF STOP.

*Plaintiffs' Exhibit 1 (in Part)*

*Schedule P.*

. CABLE RECEIVED AUGUST NINTH FROM YOUR OFFICE LUCKNOW SPECIFIES SHIPMENT TO CALCUTTA AND GIVES IMPORT LICENSE NUMBER 000417-48. OUR NEGOTIATIONS INVOLVE BOMBAY SHIPMENTS ONLY PLEASE HAVE YOUR OFFICE CONFIRM BOMBAY AND CABLE EXACT IMPORT LICENSE NUMBER OR NUMBERS. URGENT REPLY NECESSARY AS OPTION ON BOAT SPACE EXPIRES FRIDAY. ANSWER TO BARTLE COLORADO FUEL IRON CORPORATION 1616 EYE STREET WASHINGTON. (Formal parts omitted.)

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*Schedule AA.*

CREDIT RECEIVED 239,000 FAVOR W A BARTLE STOP BENEFICIARY MUST BE AMENDED TO READ COLORADO FUEL AND IRON CORPORATION 500 FIFTH AVENUE ALSO USE SAME NAME FOR FUTURE CREDITS URGE YOU USE ALL HASTE. (Formal parts omitted.)

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*Schedule AD.*

IF SHIPMENT ON THE BALANCE OF $186,600 IS TO GO OUT ON PRESENT STEAMER MUST HAVE COMPLETED CREDIT ARRANGEMENTS IMMEDIATELY. (Formal parts omitted.)

*Plaintiffs' Exhibit 1 (in Part)*

*Schedule AF.*

YOUR CABLE TWENTYFIFTH LETTER CREDIT 186600 DOLLARS ALSO ESTABLISHED YOUR FAVOUR. (Formal parts omitted.)

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*Schedule BC.*

We have just received your letter of September 9, No. 183, confirming your recent cable to the effect that you are endeavoring to obtain extension of your import license. Please accept our thanks for this information.

It has just come to our attention that the steamship Hawaiian of the Isbrandtsen Lines, which was scheduled to sail from New Orleans on or about September 3, and on which we had booked a total of 4,799 drums of caustic soda, has been held up at New Orleans on account of a marine strike.

We have felt that as a courtesy to you and for your information, you should be advised of this situation. (Formal parts omitted.)

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*Schedule BD.*

We are sorry to note, the marine strike at New Orleans holding up the sail of Hawaiian of the Isbrandtsen lines and thus causing delay in the movement of Soda Caustic shipped by the same. We shall thank you if you kindly inform us when the strike is called off and the steamer sets sail. (Formal parts omitted.)

*Plaintiffs' Exhibit 1 (in Part)*

*Schedule BE.*

ADVISE IMMEDIATELY RETURN CABLE POSSIBILITY OF SECURING IMPORT PERMIT AND EXTENSION LETTER OF CREDIT FOR BALANCE YOUR ORDER ON CAUSTIC SODA. (Formal parts omitted.)

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*Schedule BF.*

REFER YOUR CABLE NOT POSSIBILITY FOR IMPORT LICENSE EXTENSION STOP TREAT REMAINING ORDER CANCELLED. (Formal parts omitted.)

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*Schedule BH.*

Please refer to our letter dated August 9, 48 wherein we had placed an order with you for 2000 tons of Caustic Soda. The goods were to be shipped immediately partly from Golf Port and partly from some other port. As you could not ship the whole quantity within time, our Import License of 510 tons, got expired and you booked only 1490 tons of Caustic Soda.

We had purchased this material in the month of August, 1948 rightly presuming that if immediately shipped we shall have the Caustic Soda of our order latest by the end of October 1948. On this assumption, the undersigned left Bombay in the last week of October 48, but after

*Plaintiffs' Exhibit 1 (in Part)*

waiting there for 2 3/4 months he had to come away disappointed. The above ship had not arrived at Bombay even till today.

When we had placed the order in the month of August, 48, the rate of Caustic Soda in the Indian Market was about Rs. 60/- per cwt. & had we got the material in the month of October 48, we would not have suffered any loss. But now the rate of the Caustic Soda in the Bombay market has gone down to Rs. 25/- per cwt.

Not only that. The Import Duty on Caustic Soda has also been raised by the Government of India by Rs. 4/8/- per cwt. It used to be only Rs. 7/8- per cwt., but now from January 1, 1949 it has gone up to Rs. 12/- per cwt. Just on this Score (Import Duty increase) we shall have to pay an extra sum of Rs. 29800/- or about $9000.00.

Regarding the lowering of the rate of Caustic Soda, you can verify from your own market. Instead of 9.5 cents per pound American firms are now offering @ 5 cents per lb.

Calculating at the present day rates the Soda Caustic our loss amounts to Rs. 685400/- or approximately $195,620.00. It is a stunning loss, and would shake even the most soundly financed concerns.

But we hope that you will let us survive, and would not allow us to suffer a loss for which we are not responsible. You know best as to how you can help us. Our partner has had & still has dealings with many U.S. firms of repute and has been highly impressed with their realistic way of doing business. We hope you will surely come to our rescue and will not disappoint us. (Formal parts omitted.)

*Plaintiffs' Exhibit 1 (in Part)*

*Schedule BI.*

In continuation of our letter referred above we beg to state that we have miscalculated the loss due to the increase in duty from January 1, 1949 (para 4 of our above quoted letter). The actual increase in duty amounts to Rs. 1,34,100/- or about $40,230.00 and not Rs. 29800/- or about $9000.00 as stated in our previous letter in question.

Please correct your record accordingly. (Formal parts omitted.)

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*Schedule BJ.*

Receipt is acknowledged of your letters of January 8, 1949 and January 12, 1949, Nos. 419 and 422, respectively, with reference to the 1490 tons of Caustic Soda which were delivered on board the Steamship Hawaiian and shipped by us to you or September 3, 1948.

We regret to note that the failure of the Steamship Hawaiian to arrive in Bombay by the end of October, 1948 as you had expected, and the ensuing increases in the Import Duty on Caustic Soda and the decrease in the price thereof in the Indian market have caused you the losses mentioned in your letters. However, as timely shipment of the 1490 tons of Caustic Soda was made by us by delivery of the same on board the Steamship Hawaiian at New Orleans, Louisiana, on September 3, 1948 against the issuance and receipt of appropriate on board bills of lading, and as the losses suffered by you were due to events thereafter occurring and as to which the risk was necessarily assumed by you, we believe that we are free of responsibility to you and know of no ground upon which we might justifiably undertake to assume or absorb any portion of your losses. (Formal parts omitted.)

## Plaintiffs' Exhibit 2 (In Part).

*(Badhwar Deposition.)*

R. S. DASS BADHWAR, called and sworn as a witness on behalf of plaintiffs, testified as follows:

*Direct Examination by Mr. Dunn:*

Q. Mr. Badhwar, are you one of the plaintiffs in this case? A. Yes.

Q. Are you a citizen and resident of the Republic of India? A. Yes.

Q. Is the other plaintiff, R. B. Lachhmandass Mohanlal & Sons, Ltd., a limited company or corporation organized under the laws of the United Provinces now known as Uttar Pradesh? A. Yes.

Q. Which is a province of and in the Republic of India? A. Yes.

Q. And does that limited company do business in that province and country? A. Yes.

Q. And are its shareholders, directors and managing agents citizens and residents of the Republic of India? A. Yes.

Q. Do you, together with the firm of R. B. Lachhmandass Mohanlal & Sons, Ltd., constitute a partnership which has been registered under the laws of that province and which does business in that province and country? A. Yes.

* * * * * * *

[22] *Cross Examination by Mr. Bensel:*

Q. Mr. Badhwar, what is your business? A. I am general manager of sugar mills, general manager of R. B. Lachhmandass Mohanlal & Sons, Ltd., [23] sugar mills, Jarwal Road, O. T. Rly., India, and a partner of Mulkraj Brothers & Badhwar.

Q. And were you general manager and partner of that firm in August of 1948? A. Yes.

*Plaintiffs' Exhibit 2 (in Part)*

Q. And you still are? A. In August, 1948, I was not general manager.

Q. What were you? A. I was only a partner and consultant to them in their head office at Lucknow.

Q. What was the nature of the business of this partnership in 1948? A. This partnership business was importing heavy chemicals, caustic soda and soda ash.

Q. Did they use heavy chemicals that they purchased for their own account? A. No, very little.

Q. What was their principal business in connection with heavy chemicals? A. Just to sell.

Q. To resell them? A. Resell them.

Q. Would the firm be what we term brokers in chemicals? A. No. "Dealers," we would call them in India. They would import on their account and sell it.

Q. In connection with the caustic soda that is involved in this action, were they acting as dealers? A. Yes.

Q. For their own account? A. Yes, for their [24] own account.

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[31] *Cross Examination by Mr. Tillinghast:*

Q. Mr. Badhwar, would you tell us who, that is, which of the concerns which are parties plaintiff in this case imported the caustic soda? A. Mulkraj Brothers and Badhwar.

Q. That is the partnership? A. Yes, sir.

Q. Had you done any previous business in the United States? A. What do you mean, previous business?

Q. Had you purchased goods here or sold goods here? A. Yes, we had purchased goods here before.

Q. Over a period of years? A. No, I wouldn't say over a period of years, but we imported some soda ash from here, two consignments.

Q. Two consignments? A. Yes.

*Plaintiffs' Exhibit 2 (in Part)*

Q. When was that? A. That was in 1948.

Q. Do you remember what vessels those two shipments moved on? A. Yes. I guess one was Flying [32] Trader. Both were, I guess, Isbrandtsen. I don't remember the name of the other. I am trying to think of the names.

Q. Was it another of Isbrandtsen's vessels? A. I couldn't tell you, because there was—well, they came in the normal manner.

Q. Do you remember the dates on which you placed those orders for caustic soda, those two consignments you just referred to as having moved in 1948? A. Caustic soda? This?

Q. No, not this. The two shipments. A. They were soda ash.

Q. The soda ash. Excuse me. Can you give us the dates when those orders were placed? A. No. I couldn't give you the dates.

Q. Do you recall the dates when the vessels carrying those shipments arrived? A. Yes. I remember one did arrive in November, 1948.

Q. And the other one arrived when, do you recall? A. That was probably earlier.

Q. How long in length of time? A. You see, I don't remember the details.

Q. Do you recall the length of time between the time you placed the order for the soda ash and the time [33] when those shipments finally arrived in India? A. No. I can only tell you after looking at the record. I couldn't tell you offhand. But I think it took about five weeks.

Q. Did you travel to the United States by ship on this trip? A. No, I flew.

Q. Have you ever traveled to the United States by ship? A. I have.

Q. Have you ever gotten here in five weeks? A. I got from New York to Bombay in 29 days, leaving here in the first week of January, you see, or about the 12th or 13th of January, 1935.

*Plaintiffs' Exhibit 2 (in Part)*

Q. And that was on a passenger vessel? A. No, it wasn't a passenger vessel, because we were not carrying passengers only. It was a cargo vessel. And in that connection I can tell you that when I came here from Calcutta to San Francisco, which is the longest route, it took me only 34 days.

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[62] Q. When you announced to your partners that you were going to come to the United States on business, what business did you have in mind coming here for? A. When?

Q. Just preceding your present trip. A. Just preceding this present trip? Present trip? I didn't come on business before this. I came as a student.

Q. I will state my question a little differently. What reason prompted you to come to the United States on the present trip? A. To pursue this claim.

* * * * * * *

[84] *Re-direct Examination by Mr. Dunn:*

Q. Mr. Badhwar, will you tell us what dates you were in Bombay between the month of October, 1948, and the month of January, 1949? A. I was in Bombay in the last week of October, and till—I don't know the exact date in January, but it was in the beginning. During the first week I returned to Lucknow. I was [85] till then there.

* * * * * * *

Q. When did you first learn of the existence of a strike affecting the S.S. Hawaiian? [86] A. That was from Colorado's letter of September 20th, I think September 20th, which was received in India in the last week of September.

Q. Was that a letter from the Colorado Fuel & Iron Corporation? A. Yes.

*Plaintiffs' Exhibit 2 (in Part)*

Q. Signed by M. R. Rosse, general export sales manager, to Mulkraj Brothers and Badhwar in Lucknow, dated September 20, 1948? A. Yes.

Q. Prior to that time, did you have any knowledge whatever of either a threatened or an actual strike of any sort? A. No.

Q. Which might affect the shipment of the caustic soda that you bought from Colorado Fuel & Iron Corporation? A. No.

Q. Mr. Bensel asked you about a letter of January 8, 1949, from you to Colorado Fuel & Iron Corporation? A. Yes.

Q. In which there was what you testified was a wrong computation of certain figures? A. Yes.

Q. Just how was that error in computation corrected? A. By my subsequent letter dated January 12, 1949.

Q. After that time, and after the actual arrival of the goods in Bombay, did you make any further written [87] demands upon the Colorado Fuel & Iron Corporation? A. Yes.

Mr. Bensel: I object to the form of the question.

Mr. Dunn: Off the record.

(Discussion off the record.)

Q. Did you write additional letters to defendant, Colorado Fuel & Iron Corporation? A. Yes.

Q. And did you write letters to other persons, to be communicated to Colorado Fuel & Iron Corporation? A. Yes.

Q. Would you have come to the United States on this trip except for this claim? A. No.

Q. Was all of the caustic soda involved in this action purchased for resale? A. Oh, yes.

Q. Has any part of it whatever been consumed by yourself or any firm affiliated with you? A. No.

Mr. Dunn: That is all.

*Plaintiffs' Witness, Charles J. Conlon, Direct*

*Re-cross Examination by Mr. Bensel:*

Q. You stated in answer to your counsel's question that you wrote letters to other persons to be communicated to Colorado Fuel & Iron Corporation? [88] A. Yes.

Q. To whom were you referring? A. To the National City Bank of New York at Bombay, who were the intermediaries in this transaction. Then I wrote to our Ambassador in Washington. Then I also wrote to the Government of India, Commerce Department. And I also wrote to the Consul General for India in New York.

Q. I gather, then, that you wrote to each of those individuals or governmental departments requesting them, in turn, to communicate with Colorado, is that right? A. Yes.

Q. Or did you ask them to intercede on your behalf with Colorado? A. I asked them to intercede, to make Colorado pay up our claim.

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**Trial Minutes.**

[121]

*(Testimony of Charles J. Conlon.)*

CHARLES J. CONLON, called as a witness in behalf of the plaintiffs, being first duly sworn, testified as follows:

*Direct Examination by Mr. Dunn:*

Q. Mr. Conlon, what is your occupation? A. I am engaged as a foreign freight forwarder doing business under the name of Shippers Export Service Company, which I have—

Q. Where is your office? A. 368 Broadway, New York City.

*Plaintiffs' Witness, Charles J. Conlon, Cross*

Q. How long have you been engaged in the export freight business or freight forwarding business? A. Since 1928.

* * * * * * * *

[137] By Mr. Dunn:

Q. Confining yourself to the period June, July, August and September, 1948, at that time was it the custom in the industry for a freight forwarder to make inquiry as to ownership of the vessel, or the company which was going to navigate the vessel? A. You are shipping goods on a certain line that usually have the same run of vessels. If you come across one that is strange, one new to that service, then you ask the solicitor, who is your personal contact with the steamship line, or your booking agent, who is another personal contact, where they got this vessel from and the nature of it and whether it was under charter, and so forth.

Mr. Dunn: No further questions.

*Cross Examination by Mr. Bensel:*

Q. Do I gather, Mr. Conlon, that the only reason you would make this inquiry as to the ownership of the ship would be to satisfy yourself in respect to insurance problems? A. Well, as I mentioned, if a ship would come into a certain service we would make inquiries, too.

[138] Q. You mean a ship you never heard about before? A. That's right.

Q. But if you had heard about the ship before you wouldn't make any further inquiry? A. Yes, you would, because there are certain ships that stay in one service continually, and when you get one that comes in now and then, then you would ask what the reason was.

*Plaintiffs' Witness, Charles J. Conlon, Cross*

Q. In that case you would make inquiries as to the ownership of the ship and the name of the charterer who chartered it, is that right? A. Well, you wouldn't have to know the name of the charterer. You would make your inquiry through the company that had it under charter and you would ask them the particulars.

Q. After you found out that the ship was owned by the X, Y, Z shipping company, what did you do about it? A. That all depends on the nature of the shipment.

Q. In other words, you would try to satisfy yourself if that was a proper ship to carry the cargo, isn't that right? A. Our duty is to have a continual flow of export without interruptions, and if we feel that a boat is going to be tied up, we try to avoid it.

[139] Q. You mean if you find that the boat is going to be tied up you try to avoid it—is that what you say? A. Yes.

Q. Tied up by what? A. By any trouble.

Q. Such as? A. Strikes, late arrival in the port. For instance, if you have several hundred tons of cargo laying around waiting for a vessel to come in and you found out it is going to be late, you would divert that cargo to another vessel so that you can get it out, otherwise you can lose your account.

* * * * * * *

[154] *Cross Examination by Mr. Scott:*

Q. Do you know who owns the S.S. Hawaiian? A. American-Hawaiian Steamship Company.

Q. Did you know that in August, 1948? A. Yes.

Q. Would any shipping agent or freight forwarder generally seeing that name know who the owner was? A. Yes.

Q. It is a matter of common knowledge, isn't it? A. Yes, that's right.

*Plaintiffs' Witness, Charles J. Conlon, Cross*

Q. If the ship was under charter the freight forwarder would assume that the Hawaiian crew was on board the ship? A. That's right.

Q. And any freight forwarder generally would [155] have the same information you have? A. That's right.

Q. There is no mystery about these things among freight forwarders? A. No.

Q. They make it their business to know what goes on? A. It is our bread and butter and we should.

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[157] *Cross Examination by Mr. Tillinghast:*

Q. Mr. Conlon, as a freight forwarder you are engaged by exporters to make the usual transportation arrangements for the export of their goods, is that true? [158] A. Yes, sir.

Q. You engage space on a ship and prepare documents and so forth? A. Also arrange delivery.

Q. That is the general function of a freight forwarder, isn't it? A. That's right.

Q. You stated in answer to Mr. Dunn's question that among your duties and activities you are in and out of the Customs House and in and out of steamship company offices and exporters' offices, is that true? A. That's right.

Q. And in that manner you keep informed of what is going on in the trade? A. That's true.

Q. Isn't that also the function of any freight forwarder? A. Yes, sir, it is.

Q. You listed among your other qualifications that you were assistant traffic manager for Sterling Products? A. That's right.

Q. Is it part of the duties of a traffic manager to likewise keep informed of shipping conditions and transportation problems? A. Yes, sir, it is.

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*Defendant Colorado's Witness, Frederick R. Becker, Jr., Direct.*

[213]

*(Testimony of Frederick R. Becker, Jr.)*

FREDERICK R. BECKER, JR., called as a witness in behalf of Colorado Fuel and Iron Corporation, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Bensel:*

Q. Mr. Becker, where do you reside? A. In New Orleans, Louisiana.

Q. Are you connected with the Farrell Shipping Company? A. Yes, I am.

Q. In what capacity? A. As secretary-treasurer.

Q. And what is the business of Farrell Shipping Company? A. Freight brokerage and forwarding.

* * * * * * *

[215] Q. Did there come a time in the summer of 1948 when your firm was requested by Colorado to book certain space for a shipment of caustic soda? A. Yes.

* * * * * * *

[217] Q. With whom did you make the arrangements for space for this merchandise? A. Well, we were finally successful in getting space from Isbrandtsen Steamship Company through their agents, Hansen & Tidemann.

Q. In New Orleans? A. Yes.

Q. And did you, on behalf of Colorado, enter into a freight engagement contract? A. We did.

Mr. Bensel: Your Honor, that has been offered in evidence and I am not going to take any time with that.

Q. That was on July 29th, wasn't it? A. I think that's correct.

Q. Did that contract specify the boat? A. Yes, it named the SS Jane G. Swisshelm or equal A-1 substitute, as I recall.

*Defendant Colorado's Witness, Frederick R. Becker, Jr., Direct*

Mr. Tillinghast: Will you fix the date of the contract, please?

Mr. Bensel: July 29. It has been marked in evidence.

Q. At the time you were negotiating with Hansen & Tidemann for this space, did you learn from them that the SS Jane Swisshelm had been chartered by Isbrandtsen? [218] A. Yes, that is correct.

Q. Did they inform you what kind of a charter it was? A. Yes, they stated Isbrandtsen had a bare boat charter on that vessel.

Q. Did there come a time when Hansen & Tidemann advised you that Isbrandtsen desired to substitute a vessel for the Swisshelm? A. Yes.

Q. Do you remember when that was, approximately? A. No. It was either at the time of the first booking or shortly thereafter.

Q. Did they tell you the name of the vessel that they were going to substitute? A. Not at that time. It was not known. Later they did.

Q. Well, did there come a time in August, 1948, when they advised you of the name of the vessel to be substituted? A. Yes.

Q. What was it? A. The SS Hawaiian.

Q. When you were advised the Hawaiian had been substituted, did Hansen & Tidemann advise you whether [219] that had been chartered by Isbrandtsen? A. I don't believe they did. I'm not positive of that point.

Q. Did they advise you what kind of a charter arrangement existed between— A. No.

Q. —Isbrandtsen and the owner of the Hawaiian? A. No, definitely not.

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*Defendant Colorado's Witness, Frederick R. Becker, Jr., Direct*

[220] Q. Mr. Becker, after you made your arrangements with Hansen & Tidemann for the transportation of this merchandise, did you communicate that fact to Colorado Fuel? A. Yes.

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[221] Q. Subsequent to the writing of this letter of July 29th to Mr. DeBoer, did Colorado thereafter request your firm to see whether you could book 500 additional tons of caustic soda? A. Yes, they did.

Q. And did you make these arrangements? A. We did.

Q. With Hansen & Tidemann? A. Yes, with Hansen & Tidemann.

Q. Prior to this request for increased space you had been advised, had you not, that Isbrandtsen had substituted the SS Hawaiian for the Swisshelm? A. Yes, I believe it was about two days before we finalized the arrangements for the additional tonnage.

Q. Did Hansen & Tidemann advise you at that time when the latest shipside delivery had to be made aboard the Hawaiian? A. I believe they did. I think, if I recall correctly, it was about August 30th or September 1st.

Q. I show you a telegram of yours dated August 17, 1948, and see whether that will refresh your recollection as to the latest shipside delivery date given to you (handing)? A. (Examining) Yes.

[222] Q. What was it? A. September 2nd.

* * * * * * * *

[225] Q. Mr. Becker, if you had known that the S.S. Hawaiian had aboard a west coast crew when it was substituted for the Swisshelm, and if you had knowledge or if you had known that fact at any time thereafter and before September 2nd or 3rd, would that fact have caused you to change the arrangements then in effect for the shipment of this merchandise? A. No.

*Defendant Colorado's Witness, Frederick R. Becker, Jr., Direct*

Q. Did you as the representative of Colorado consider that you had a firm engagement for that space with Hansen & Tidemann? A. Yes, we had a firm booking with Hansen & Tidemann and Isbrandtsen was within their rights in substituting a vessel.

Mr. Dunn: I move to strike out the latter part of the answer.

The Court: Yes, that is a matter for me to determine as a matter of law.

[226] The Witness: I see.

The Court: I understand, though, that there is no contention made by the plaintiffs that there was any damage suffered by reason of the substitution of ships.

Mr. Dunn: Well, as part of the general picture, that is how this ship got into the case.

The Court: All right.

Q. In your examination in New Orleans you had been questioned by Mr. Dunn as to what knowledge or information you had in the months of June, July and August, 1948, about an impending or threatened strike. Do you remember being asked questions on that subject? A. Yes.

Q. And I believe you testified in substance that you did not recall whether you had read in the newspapers about that matter? A. That is correct.

Q. And to refresh your recollection you testified in substance that you would have to refer to the newspapers to answer the question? A. Correct.

Q. Have you since that examination in New Orleans at my request read over certain news articles appearing [227] in New Orleans papers contained in this transcript of newspaper stories re the 1948 maritime strike that was marked here as an exhibit upon the depositions in New Orleans—

*Defendant Colorado's Witness, Frederick R. Becker, Jr., Direct*

Mr. Dunn: Subexhibit to Exhibit 4.

Q. Subexhibit to Exhibit 4? A. Yes, I have looked this over and refreshed my memory.

Q. Having looked at those newspaper articles, does that now refresh your recollection that in the summer of 1948 you kept abreast of the news articles? A. Well, it is evident I must have read all or some of those because of the long period—due to the long period of time in which they were published in the press.

Q. And, of course, you had an interest in maritime matters and the subject matter of these articles? A. Yes.

Q. Having refreshed your recollection from these news articles, did there come a time in August, 1948, when you learned that the threatened strike at the Port of New Orleans had been settled? A. Yes, the papers, the articles reported that the Atlantic and the Gulf situation had been settled.

[228] Do you remember about when you learned that? You can look at those articles to refresh your recollection.

Mr. Tillinghast: If it please the Court, I think you will find that the testimony has a purpose of impeaching this witness' testimony that he gave in New Orleans at that time.

Mr. Bensel: If your Honor please, this isn't an objection and I am not impeaching the witness. I have read the testimony over carefully—

The Court: I don't want any arguments from either side, and if it is in the nature of an objection it is overruled.

A. About August 18, 1948.

The Court: Have this paper that the witness is looking at now identified on the record.

Mr. Bensel: I did, your Honor.

The Court: This is one of the exhibits?

Mr. Bensel: Yes, your Honor.

The Court: What exhibit is it?

Mr. Bensel: It is an exhibit attached to Exhibit 4 of the depositions down in New Orleans. I think I identified it on the record. It does not have an actual exhibit number.

[229] The Court: We have taken it in evidence as part of Exhibit 4?

Mr. Bensel: Yes, sir, that is correct.

The Court: This is a compilation which contains an affidavit—

Mr. Bensel: That is right.

The Court: —by some lady down there.

Mr. Bensel: That is right.

The Court: By a Miss Farley?

Mr. Tillinghast: O'Brien.

Q. Having refreshed your recollection from these news articles, were you in August, 1948, in a position to form an opinion as to whether a strike would be called on or after September 2, 1948, that would affect shipping in the Port of New Orleans? A. I did form the opinion that there would be no trouble at New Orleans, there would be no strike there.

The Court: Well, did you have that opinion and belief?

The Witness: Yes, sir.

The Court: Did you communicate that opinion or belief to anybody in writing in this case, Colorado or anybody else?

[230] The Witness: No, sir, I did not.

The Court: Was that opinion and belief predicated upon any communication written or otherwise that you had received from either the American Hawaiian Steamship Company or Isbrandtsen?

The Witness: No, sir.

*Defendant Colorado's Witness, Frederick R. Becker, Jr., Cross*

By Mr. Bensel:

Q. What was it based on? A. It was based on these news reports.

Q. That the strike had been settled? A. Yes, sir.

Q. The threatened strike? A. That is the only source of our information.

Q. In this period, June, 1948, through early September, 1948, did you talk with, write to, Hansen & Tidemann, Isbrandtsen, or any other representatives of the Isbrandtsen Line in regard to this threatened strike? A. No, I don't believe I did.

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[262] Mr. Bensel: On the record, your Honor, we have checked. September 3rd was the Friday before Labor Day and the 7th was the Tuesday after Labor Day.

The Court: The Court will take judicial notice of that.

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*Cross Examination by Mr. Tillinghast:*

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[266] Q. Have you testified who prepared the bills of lading? A. We prepared them, presented them to Hansen, Tidemann & Dalton, and they finalize them by putting proper rubber stamps and dates and signatures, etc.

Q. Did you discuss this shipment with the American-Hawaiian Steamship Company at any time? A. No, at any time.

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*Cross Examination by Mr. Dunn:*

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[273] Q. I think you answered Mr. Bensel's question as to the strike situation by saying that regardless of your state of knowledge of the strike you would have acted exactly the same as you did here? A. Yes. May I explain that?

Q. Yes, go ahead. A. We had a contract for the S.S. Jane Swisshelm or A-1 substitute. From my knowledge

of the business, as long as the ship which Isbrandtsen gave us was a good ship we would have no legitimate reason to object to any vessel they might tender us and, furthermore, we could not know even from newspaper articles or what that a strike would definitely occur on September 2nd or 3rd or 4th. Strikes are threatened continuously. They never materialize or they are often deferred.

And another thing, this contract bears a clause to the effect that if the shipper is—

Q. Wait—

Mr. Bensel: You asked him.

The Court: I don't want witnesses interrupted, [274] and I don't want talk between counsel. The witness will finish his answer.

A. This contract bears a clause to the effect that a shipper is responsible for demurrage, which means if the ship is unduly delayed, caused by a shipper's fault, he would be responsible. Therefore, if I, surmising on a basis of news reports or any other information which I might have that a strike was going to occur on September 3rd, and if I took steps on August 25th or August 15th or any other day to prevent that ship from loading and if I guessed wrong, I would have liabled my shipper for suit by Isbrandtsen Steamship Company. They could hold our shipper responsible for demurrage for all of the time the ship was delayed and very possibly for dead freight if I didn't let the cargo get loaded at all, and that was $32,000 of freight alone in that shipment, aside from any demurrage that might accrue.

So as I see it I had no choice in the matter.

Q. Thank you for your explanation. Do I take it also as your testimony that you never inquired anything about the ownership of this vessel? A. Of the Hawaiian?

Q. Yes. [275] A. That is correct.

*Defendant Colorado's Witness, Frederick R. Becker, Jr., Cross*

Q. And that from your experience in the shipping industry you are not familiar with names of the vessels or with the vessels operating under particular lines ordinarily so that this would suggest anything to you? A. May I say that many ships bear similar names and exactly the same names, and we could, by referring to Lloyd's determine if there were two or three ships named Hawaiian, but unless we inquired specifically of the agent we would have no way of knowing which S.S. Hawaiian was being tendered us and who owned it.

Q. So you were not concerned with what type charter existed here? A. Between American-Hawaiian and Isbrandtsen?

Q. Yes. A. No, that was none of my business.

Q. And you were not concerned originally as to whether the Jane G. Swisshelm was in a position to make this voyage or not as long as she was named in the affreightment contract? A. We were concerned, but, as I said before, we try to deal with reputable people and we could not [276] possibly try to trace movements of ships throughout the world and expect to be able to pinpoint them down in their whole rotation and when they are going to get places. We have to depend upon the people we do business with and our main concern is to try to do business with people who in our opinion are reliable and honest and trustworthy.

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[277] Q. I think you stated in New Orleans that you knew all vessels are unionized 100 per cent, all American vessels; is that so? A. Yes.

Q. You assumed, of course, that that applied to the S.S. Hawaiian as an American vessel? A. I gave it no thought whatever. It is a foregone conclusion.

Q. Was it also part of your knowledge, if it was, that when a union strikes on a vessel all the others [278] strike

simultaneously with respect to that vessel and refuse to pass picket lines? A. I don't quite understand your question, sir.

Q. I will rephrase it. Were you aware, if you were—and correct me if I am wrong—that the strike of any operating personnel on that vessel accompanied by the picketing that goes with a strike would tie up the vessel at least because of the refusal of the other unions to cross the picket line? A. That is customary. I don't know whether it is 100 per cent correct. In most cases unions respect other picket lines.

Q. And were you aware that a vessel is unable to sail if any part of its operating personnel is missing? A. Yes, certainly.

Q. Were you concerned with this cargo leaving port, Mr. Becker? A. Was I concerned with it leaving port?

Q. Yes. Was that any of your concern? A. My responsibility in all cases is to get my cargo delivered, get it loaded, have my documents properly prepared and presented in accordance with my shipper's instructions. Beyond that I never know, unless I make specific inquiry when a shipper may ask me, when [279] a vessel sails, what the scope of its voyage may be unless of course, they incorporate it in the bill of lading when they issue it to us.

Q. Do you conceive your duties as constituting the obtaining of a bill of lading? A. Well, that is my primary duty. That is my final duty. Everything else is just to build up to that, because a shipper—the whole transaction hinges around the ocean bill of lading.

Q. And in this case did anybody in Colorado Shipping or Colorado Fuel give you any special instructions concerning seeing that this cargo left port? A. No.

Q. Did they give you any instructions concerning your handling of this cargo because of the existence or the threatened existence of any strike? A. No.

*Defendant Colorado's Witness, Frederick R. Becker, Jr., Cross*

Q. Do you follow me. In other words, did they say anything to you about taking any particular course of action on account of a strike? A. No, at no time was any discussion of a strike ever brought into this transaction until after the strike actually occurred.

[280] Q. I think you said you knew what a time charter implied with respect to the operation of a vessel. A. A time charter?

Q. Yes. A. Yes.

Q. To simplify that, I mean with respect to who employs the crew and the captain. A. Yes. Generally under a time charter the owner of a ship furnishes the crew, the fuel and so forth for the voyage and turns the ship over at a given point as required in the charter and it has to be turned back before the expiration of a specified period.

Q. And you knew that at the time we are talking about in 1948, did you not? A. I had that knowledge of what a time charter required, yes, but I did not know what type of charter was made between American-Hawaiian and Isbrandtsen on this transaction.

Q. Yes, I think you told us you did not inquire into that and did not make any inquiries about the ownership of the vessel. A. That's right.

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[281] Q. But you knew there was strike talk in the wind and in the papers, did you not? A. Yes.

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[282] Q. Take this case: you were dealing with Isbrandtsen? A. Correct.

Q. Did that mean to you that Isbrandtsen was going to be the operator and navigator of the SS Hawaiian? [283] A. No, sir, it did not necessarily mean that.

*Defendant Colorado's Witness, Frederick R. Becker, Jr., Re-cross*

The Court: Operating and navigating are two different things.

Mr. Dunn: I am sorry, Judge.

The Court: The master navigates.

By Mr. Dunn:

Q. So when you say you had no reason to wonder whether this strike you read about was going to affect this vessel, are you basing that on the fact that you did not know that American-Hawaiian was the owner of this vessel? A. I could base it on that fact, plus the fact that I did not know what type of charter was involved.

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[290] *Re-cross Examination by Mr. Dunn:*

Q. Now, Mr. Becker, you say you did not know one way or the other whether there was a strike in existence at the time that you got the bills of lading, is that right?

Mr. Bensel: We have been over that, your Honor, two or three times and I think it is repetitious.

The Court: I suppose a lot of this is repetitious as I look over this deposition, but a little more repetition won't hurt.

Mr. Bensel: All right.

A. Mr. Dunn, I have already stated that I do not recall the exact time we learned of the strike, nor do I recall the exact time that we received the bills of lading. All I can state is it was September 3rd.

Q. Well, then, is it quite possible that the strike was in existence on September 2nd without you knowing about it? [291] A. If you mean is it possible that the union chiefs had called the strike without my knowing it—

Q. Yes. A. —yes, that could have happened.

*Defendant Colorado's Witness, Frederick R. Becker, Jr., Re-cross*

Q. Is it possible that the crew of this vessel had walked off the ship without you knowing about it? A. It would be possible. I do not handle the ship, sir. I would like to add something there, if I may. Even if a strike—

Q. Don't add anything, please. Your counsel can ask you anything he wants.

The Court: Well, to save time, what do you want to add?

The Witness: Well, this, sir: If a strike was called by a union chief on September 2nd, it does not necessarily mean that the crew, as far away removed as New Orleans, would immediately walk off the ship.

By Mr. Dunn:

Q. That is quite true, but suppose they did, did you know about it? A. No.

Q. Can you tell us whether they did? A. No, I cannot tell you that.

* * * * * * *

Q. In other words, you did not know then whether or not the crew had walked off or had not walked off on September 2nd, is that correct? A. Yes, that is correct.

* * * * * * *

## Plaintiffs' Exhibit 4 (In Part).

*(Becker Deposition.)*

[174] FREDERICK BECKER, JR., called by and on behalf of the plaintiffs, being first duly sworn by a Notary Public, was examined and testified as follows:

*Direct Examination by Mr. Dunn:*

* * * * * * *

[178] Q. How do you go about learning what vessels are available on which you might engage cargo space, if you should so desire? A. When we get an inquiry from a shipper for a given cargo in a given direction, we know from experience which agents generally operate in that direction and we contact their offices to ascertain which vessels they have, when they will be receiving, when they are scheduled to sail and the ports of call to which they are going.

Q. Do you do that with respect to each specific piece of business that a shipper gives you? A. Unless there is instructed routing by the particular shipper, we always check to see which vessel is in the most suitable condition, taking into consideration the particular shipper's contract requirements with the various steamship requirements so forth that are operating.

Q. In your experience as agent for Colorado, has it customarily been specified to you what ship to use? A. In the—

Q. Or otherwise in the case— [179] A. If you are referring to their shipments of steel, in most cases they do. This particular shipment of caustic, as I recall it, was a question of trying to find a boat.

Q. In trying to find a boat, what did you do? A. On this particular shipment?

Q. Yes. A. Well, as I recall it, we contacted the regular steamship companies operating in the conference to India, which, I believe, at the time, were Isthmian Steamship Company and the Kerr Steamship Company, agents for the Silver Java Line.

*Plaintiffs' Exhibit 4 (In Part)*

Q. Did you make any shipping commitments with Isthmian and/or Kerr? A. No, they had no space at the time for caustic soda.

Q. What did you do then? A. To the best of my memory, we then canvassed the market to see what other vessels may be available with other operators of vessels, whether in or out of the conference.

Q. What did you find with respect to Isbrandtsen vessels? A. Well, as I recall it at the time, we contacted Hansen & Tidemann, who was also interested in any large parcel in any direction, as a nucleus of cargo to submit to their principals, Isbrandtsen Steamship Company, and eventually, if my memory is correct and which my file, I am sure, will bear me out, we were offered a booking [180] or a vessel by the Isbrandtsen Steamship Company through their agent here.

* * * * * * * *

[208] Q. You were referring to the newspaper when you were interrupted in your answer. Did you gain any knowledge from newspapers concerning the pending strike, as you called it? A. Again, I can only say, if it was printed in the papers as an average person reading the daily news I would know about it, but to state when it was first printed in the papers, if it was predicted ahead of time or when it was first printed, if and when it actually happened, I do not recall.

Q. I take it you also listen to news broadcasts? A. Occasionally, when time permits. At that particular time we had very little time to listen to anything. We were working night and day.

Q. Did you have a radio in your home? A. Yes, we have radios in our home.

Q. Did you have a car with a radio in it? A. Yes, I had a car with a radio at that time.

Mr. Dunn: You may inquire.

*Plaintiffs' Exhibit 4 (In Part)*

[209] *Cross Examination by Mr. Bensel:*

Q. Mr. Becker, have you any independent recollection of having read a newspaper article about a pending strike prior to October 3, 1948? A. No, sir; I cannot recall whether I first read it or if I read it.

Q. You have no recollection you ever read it in any newspaper concerning a threatened strike or a pending strike? A. That is correct.

* * * * * * * *

[236] Mr. Tillinghast:

Q. If there were an event such as a strike or a labor stoppage, which might prevent the loading of your client's cargo on a ship, on which you have booked space, that would be serious enough for your attention, would it not? A. Yes, certainly.

Q. And you make it a point to keep informed of such situations. Isn't that a fact? A. To the best of our ability; yes.

Q. And you would know of an impediment such as the strike in 1948, wouldn't you? A. Not necessarily. We do not deal with, and in some cases shippers and port authorities—everybody exerts every effort to settle the thing and keep it quiet, and not alarm shippers unnecessarily. It could mean diversion of cargo from a port needlessly.

Q. Yes, I can understand that, but my point is that you keep yourself informed of such situations, don't you, when they come to your attention? A. When they come to our attention, very definitely we do. If we are aware of an impending strike of stevedores, [237] longshoremen, car unloaders, ship crews, naturally we do because when we are quite certain it is going to happen, we notify as many as possible of our shippers.

Mr. Tillinghast: I have no more questions.

* * * * * *

*Plaintiffs' Exhibit 4 (In Part)*

*(New Orleans Press Reports, in Part)*

TIMES-PICAYUNE, TUESDAY, JUNE 15, 1948—Page 1

Column Head: COURT BANS PUTS OFF SHIP STRIKE

Sub-Head: Three Orders cover all Coasts for 80-Day Wait

(The AP)

New York, June 1—The threatened nationwide maritime strike appeared off for at least 80-days today after the Federal Government got three injunctions against it.

The three orders were signed by Federal judges in the East and Gulf Coasts, West Coast and Great Lakes phases of the dispute.

That automatically brought into play the 80-day cooling-off period provided by the Taft-Hartley Law, federal officials said.

Late today officers of the C.I.O. National Maritime Union, largest of the seven unions involved, sent out instructions to all members directing that the injunction be obeyed.

. . . . . .

*Vote Not Nullified*

"Our compliance with this restraining order does not nullify our strike vote," the message said. "Its application is delayed only until the union is free to move." The injunctions were signed by Judge John W. Clancy in New York (East and Gulf Coasts), Judge George B. Harris in San Francisco (West Coast) and Judge Emerich B. Freed in Cleveland (Great Lakes).

In San Francisco, five maritime unions denounced the temporary restraining order as a "straight out strike breaking attempt for which President Truman must take full and odious responsibility."

*Plaintiffs' Exhibit 4 (In Part)*

Although the unions involved did not immediately rescind strike instructions to their memberships, there were other official indications the Court order would be obeyed.

*Hearing Monday*

* * * * * * *

The three unions named in Judge Clancy's order are the N.M.U., the C.I.O. Marine Engineers' Beneficial assn. and the C.I.O. American Radio Association.

Other unions involved in the dispute are the C.I.O. International Longshoremen's and Warehousemen's Union, the C.I.O. Marine Cooks and Stewards, the A.F.L. International Brotherhood of Electrical Workers and the Firemen and Oilers, an independent group. These four operate on the West Coast, as does M.E.B.A.

N.M.U. and M.E.B.A. negotiators met with representatives of the ship owners at bargaining sessions here today.

*Says Ship Lines' Acts Aid Soviet's Program*

Steamship operators are lending aid and comfort to the Soviet union in calling for an end to union hiring halls for seamen, Harry Alexander, acting port agent at New Orleans for the National Maritime Union, said Monday.

Alexander said, "One of the major projects of the communists is to sabotage the Marshall Plan and they know that a maritime strike will do just this. The operators also want a strike to test their strength against the union in an attempt to break the union."

He said that an end to the hiring halls will cause "much confusion" in the shipping industry. "The men will

*Plaintiffs' Exhibit 4 (In Part)*

spend their time on the beach (ashore) going from shipping company to shipping company looking for berths (jobs)," he said.

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NEW ORLEANS ITEM, THURSDAY, JUNE 24, 1948—Page 2

Column Head: JUDGES HALT NATIONWIDE SHIP STRIKE

New York (UP)—The actions of federal judges in New York and San Francisco today headed off a nationwide maritime strike by 100,000 union members scheduled for midnight tonight.

An 80-day injunction against the strike was issued here today by U. S. District Judge John Clancy. The no-strike order was against the National Maritime Union, the Marine Engineers' Beneficial Assn., and the American Radio Assn., all CIO unions.

In San Francisco, U. S. District Judge George B. Harris granted the government a 10-day extension of a temporary restraining order against other unions threatening to strike.

A similar restraining order was issued yesterday in Cleveland preventing a threatened strike on the Great Lakes at least until July 2.

*President's Orders*

President Truman has ordered the government attorneys to seek the injunction against the strike under provisions of the T-H law.

*Plaintiffs' Exhibit 4 (In Part)*

In handing down his decision, Judge Clancy ruled that a Maritime strike would endanger national safety and health.

The injunction provided that the "status quo be maintained in the use of union hiring halls to furnish workers for the ship operators." That is one of the main issues involved in negotiations between the unions and the ship owners.

*Issue in Dispute*

Joseph Curran, head of the NMU, said that the injunction meant only that the strike would be delayed 80 days and that the union men would go out at that time if the union hiring hall issue has not been permanently settled.

Employers have insisted that in order to comply with the T-H law the hiring hall must be operated by an impartial dispatcher instead of by union men as is done at present.

Others among the seven unions involved in the threatened strike were the International Longshoremen's and Warehousemen's Union (CIO), the Maritime Cooks and Stewards Union (CIO), the Electrical Workers (AFL), and the Marine Firemen's Union (Ind.).

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NEW ORLEANS STATES, MONDAY, AUGUST 16, 1948 —Page 5

Column Head: No Truce Seen in Maritime Fight in West

(The AP)

Washington, August 16—A presidential fact-finding board held out little hope for settlement of a West Coast maritime dispute.

*Plaintiffs' Exhibit 4 (In Part)*

But the board described prospects for settlement on the East coast as "very good."

Seven unions are involved. The most important are the CIO Longshoremen, headed by Harry Bridges, and the CIO National Maritime Union, headed by Joseph Curran.

The board said in a report filed with the White House late Saturday that West coast negotiations "have been fruitful only in charges of bad faith and intensification of distrust and bad feeling."

On the East Coast, the board said, "the parties appear to have made earnest and effective efforts to reach agreement."

"Remaining differences are quite narrow, with good prospect for a settlement in the near future," the report said.

On the Great Lakes where employers do not bargain jointly, some already have reached settlements, the Board reported.

The Board made its report to President Truman under the national emergency provision of the T-H Act. It made no recommendations and merely related the situation. It said the dispute over methods of hiring still is the big barrier to a general agreement.

The justice department obtained injunctions June 14 in New York, San Francisco, and Cleveland, blocking an all coast strike of seamen and dock workers.

The National Labor Relations Board now must conduct elections to determine whether the workers wish to accept the employers' final offers. The elections must be finished within 15 days.

If the workers vote against accepting the final offers, the law provides for lifting of the injunctions. This would leave the workers free to strike.

*Plaintiffs' Exhibit 4 (In Part)*

NEW ORLEANS ITEM, TUESDAY, AUGUST 17, 1948
—Page 1

Column Head: SEAMEN'S HIRING HALL ISSUE AGAIN IN OPEN

By: John Collier

Issues in the maritime dispute, which may result in a nationwide shipping strike September 2 were further clouded today.

The union hiring hall issue, a main stumbling block believed eliminated by an agreement weeks ago, was thrown wide open today by a ruling of a National Labor Relations Board Examiner.

The examiner, Wallace Royston, accused two CIO maritime unions of violating the Taft-Hartley law by demanding that shipping firms make exclusive use of union hiring halls for employees.

He charged further that the unions had refused to negotiate the matter in good faith. His recommendations must now be considered by a five-man National Labor Relations Board board, and ultimately by the courts.

The examiner's charges were denied by New Orleans officials of the National Maritime Union, one of the two involved.

Several thousand NMU seamen were here awaiting the outcome of the negotiations, being conducted by representatives in New York.

The ABCs of the situation, and the impact of the examiner's charges are as follows:

Some six unions, including the NMU, are involved in the dispute. They are under court orders not to strike, invoked under the Taft-Hartley Law.

The orders expire September 2.

*Plaintiffs' Exhibit 4 (In Part)*

The hiring hall at first was the main issue of all these disputes—whether the T-H law made illegal the old agreement under which shipping companies did their hiring through union halls.

The issue is still a "hot potato" on the West coast, especially for Harry Bridges and his left-wing International Longshoremen and Warehousemen's Union.

But on the East and Gulf coasts it was believed settled so far as it—the NMU was concerned.

This was because the union and operators had agreed to continue present hiring arrangements pending "judicial determination of their legality."

Believing that the hiring hall issue had been eliminated as a danger point, union officials turned their attention to collateral issues such as wages, retroactivity and wage review.

But the examiner's ruling brought the hiring hall back into focus.

*Must Negotiate*

Royston did not rule that hiring halls themselves violate the labor law. But he said the unions must negotiate the issue in "good faith" with the employers. That, he said, they had "refused to do."

This was denied in New Orleans by John McDougall, NMU port agent.

The NMU and operators, he said, had negotiated the matter with operators to such an extent that "we had a written agreement."

Both sides agreed to maintain the status quo on hiring halls unless the courts at some future date should rule otherwise. In that event we would abide by the decision and rewrite the agreement.

"The hiring halls do not constitute a closed shop," he said.

*Plaintiffs' Exhibit 4 (In Part)*

Until today the NMU had turned most of its attention to the wage issue. AFL seamen received a pay boost last week and NMU officials said their people were not offered as much. The NMU yesterday in New York demanded wage parity with the AFL (Seafarers' International Union).

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NEW ORLEANS ITEM, WEDNESDAY, AUGUST 18, 1948—Page 1

Column Head: SHIPPING STRIKE IS AVOIDED

New York (UP)—The U. S. Conciliation Service announced today that an agreement had been reached between the National Maritime Union (CIO) and Atlantic and Gulf Coast shipping operators, settling a strike threatened for September 2.

The agreement reached after an 11 hour session between representatives of 42 shipping companies and the union, called for wage increases of $25 a month for boatswains and $12.50 for other personnel. The raise is retroactive to July 16.

*Retain Hiring Hall.*

The terms of the agreement were the same as those reached last week between nine Atlantic Coast operators and the Seafarers' International Union (AFL).

The agreement retained the disputed hiring hall which had been opposed previously by the operators and declared illegal on Monday in a report of a National Labor Relations Board examiner.

*Plaintiffs' Exhibit 4 (In Part)*

The new contract which is expected to be signed in a "week or two," as soon as the NMUs 60,000 members have ratified the agreement, will be effective until July 15, 1949.

*Contract Benefits.*

The union's contract with the shippers expired June 15. A threatened strike was postponed, when the government obtained injunctions prohibiting strikes and lockouts until September 2, under provisions of the T-H Act.

Other union benefits under the proposed new contract were: Penicillin to be included in ship's medical stores and distributed free when needed; shore sick pay raised from $3.50 to $6.00 per day; and overtime pay for Monday's work when a holiday falls on Sunday.

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NEW ORLEANS STATES, SATURDAY, AUGUST 28, 1948—Page 2

Column Head: SHIP RADIO MEN GET 6PC HIKE

(The AP)

New York, August 28—Some 2,000 ship radio operators who threatened to strike September 2 have been granted a six per cent increase in their basic wage.

The agreement was reached yesterday by officials of the CIO American Radio Association and East and Gulf Coast shipping companies.

*Plaintiffs' Exhibit 4 (In Part)*

NEW ORLEANS STATES, MONDAY, AUGUST 30, 1948—Page 28

Column Head: WATERFRONT STRIKE NEARS IN WEST COAST SNARL.

(The Associated Press)

San Francisco, August 30—Pacific coast maritime contract negotiations wrangled on today in an atmosphere of more than usual antagonism.

The waterfront picture became much more difficult late yesterday when longshore union spokesmen turned the latest employer proposals "completely unacceptable."

They reaffirmed that their coastwise strike called for next Thursday, when an 80-day government injunction expires, would come off on schedule.

*Still Optimistic.*

But Robert Mayer, spokesman for the employers, still maintained the outlook was "optimistic."

Harry Bridges' CIO Longshore Union, thru Spokesman Morris Watson, said the employers had not offered to continue the present form of hiring hall—the key issue in talks—and union security.

The employers emphatically denied this. Frank Foisie, president of the employer group, said the union statement was "pure hokum, intended only for confusion."

"On the hiring hall, we made the identical concession that was made in the East last week which prevented a strike," he added.

*Plaintiffs' Exhibit 4 (In Part)*

*Disagree on Raise.*

Foisie was speaking of the employer offer, accepted by Eastern maritime unions, to leave the hiring hall as presently set up pending court determination of its legality under the T-H law.

The hiring hall now has a union-hired dispatcher; the employers say the dispatcher, under the law, must be neutral.

Foisie said the employers' offer of an 8-cent wage hike "puts longshoremen 15 per cent ahead of the cost of living increase based on labor department figures." The union called 8-cents inadequate—far below increases granted by other major employers.

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New Orleans States, Tuesday, August 31, 1948—Page 24

Column Head: Pacific Coast Dock Strike Still Threat

(The AP)

San Francisco, August 31—An agreement on the thorny hiring hall issue appeared in sight today but a labor peace hung precariously as the 12:01 A. M. Thursday strike deadline neared.

Waterfront employers and the CIO International Longshoremen's Union still were far apart on the wage question among others.

The employers yesterday reported their offer of 2-cents to 10-cents an hour straight time and 15-cents overtime in an effort to forestall the threatened walkout but the union insisted on 18-cents and 27-cents.

*Plaintiffs' Exhibit 4 (In Part)*

*No Wage Reviews.*

An ILWU statement said the employer offer did not provide for retroactivity and did not contain "the usual periodical wage reviews."

On the hiring hall issue, the ILWU said "an agreement in principal was reached."

"The employers are considering language offered by the union which, if accepted, will remove the hiring hall as a strike issue," it explained.

*Indicates "No Change."*

But an employer spokesman indicated no change in the employers' attitude that the hiring hall be left status quo pending court determination of its legality under the T-H Law. This was the basis of this month's East Coast maritime settlement.

What the government will do when the 80-day federal "cooling-off" injunction expires remained a question. Jesse Rosenberg, special department of justice attorney said he had asked Washington for instructions on lifting the injunction.

Injunction or no, the longshoremen announced their decision to stop work Thursday still stands.

*Plaintiffs' Exhibit 4 (In Part)*

New Orleans States, Wednesday, September 1, 1948—Page 3 o

Column Head: Rail Embargo Due in Shipping Strike

(The AP)

Washington, September 1—The railroads today prepared to clamp an embargo on virtually all freight destined for shipment from West Coast ports if a maritime work stoppage develops there tomorrow as threatened.

Plans for the embargo were announced by Arthur H. Gass, Chairman of the Car Service Division of the Association of Railroads.

Gass said the embargo is a protective measure to prevent freight cars being tied up at western ports in case of a maritime work stoppage. If the work stoppage does not occur, the embargo will be withdrawn at once, he said.

*Some Freight Exempt.*

Gass said these four classes of freight are exempt from the embargo:

Green soy beans, flax seed, malt and rice in bulk when they are covered by permits issued by elevator operators where the freight is to be unloaded.

Petroleum or petroleum products in tank cars when they are to be unloaded prior to overseas shipment.

Freight consigned to the Army, Navy, Air Force, Marine Corps or Coast Guard. Freight airship space is available and for which special permits have been issued by West coast representatives of the Car Service Division of the AAR.

*Plaintiffs' Exhibit 4 (In Part)*

*Negotiators Huddle.*

In San Francisco negotiators were called together in an 11th-hour hope of averting a tieup of Pacific coast shipping at midnight tonight.

Prospects of reaching a settlement between the employers and five unions in time to avoid a work stoppage appeared slim. The unions have agreed that "all or none" will sign, and even with an agreement the mechanics of adjusting all contracts before the walkout deadline would require time.

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New Orleans States, Thursday, September 2, 1948—Page 1

Headlines: Strikes Threaten To Cut Supplies To Big Cities

Column Head: Two Walkouts Block East, West Coasts

—Bulletin—

(The AP)

Washington—President Truman said today he is powerless to take further action in the West coast maritime strike except through negotiation.

He made this remark at his news conference when asked what action he contemplates in that case and in the New York strike.

Mr. Truman did not reply as to the New York strike but he said he has taken every possible action under the law in the West coast case.

*Plaintiffs' Exhibit 4 (In Part)*

(The AP)—Two major work stoppages on the East and West coasts today threatened to cut off supplies to a large segment of the nation's population.

Freight shipments into New York City and Pacific coast ports from Seattle to San Diego were halted by rail embargoes as the work stoppages went into effect.

Involved in the New York dispute are some 10,000 AFL truck drivers who quit work yesterday after rejecting a proposed wage agreement. On the West coast, 16,000 CIO longshoremen and seafarers stayed away from their jobs and prepared to set up picket lines in a dispute over wages and a hiring hall issue.

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New Orleans Item, September 2, 1948—Page 1

Column Head: ILWU Calls For Walkout

San Francisco (UP)—CIO longshoremen and waterfront employers broke off negotiations tonight and dock worker chief Harry Bridges announced the Pacific Coast strike of 30,000 maritime workers "is on."

The end of the day's long discussions came suddenly, two hours after negotiators for the CIO International Longshoremen's and Warehousemen's Union and the waterfront employer's association went into a joint night session at 8:30 P. M.

"Employers slapped down this offer on a take it or leave it basis," Bridges said, "It is left. The men will go out tomorrow morning at 10:14 A. M."

*Plaintiffs' Exhibit 4 (In Part)*

*Bridges Confident.*

The collapse of the discussions with the ILWU made a coast wide tieup of all ports at 10:15 A. M. tomorrow a virtual certainty. Unless the federal government finds some way of extending an injunction that expires at that time, the restraint that has held the 12,000 longshoremen and 16,000 allied seafaring workers from a walkout for 80-days under the T-H Act will have been lifted.

"I'm sure the government won't step in," Bridges said as he emerged from the meeting.

All of the five west coast unions threatening walkout are mutually pledged to strike unless each has signed a satisfactory agreement.

A strike meant an immediate railroad embargo of all shipments destined for ocean transfer through ports along the 1800-mile Pacific Coast.

*550 Ships Affected.*

It meant a tieup of some 550 ships, 375 of them American flag vessels—unless some of them could escape the blockade that might begin tonight at midnight when marine firemen and engineers (Ind.) have scheduled the beginning of the picketing.

The Pacific American Steamship Association calculates that the walkout will halt movement of an estimated $6 million of war production every month and affect the jobs of 530,000 wage earners in freight trade alone, plus the 30,000 longshoremen, and seafarers and allied trades and thousands of other workers.

Loss in wages for the seamen, cooks and stewards, longshoremen, engineers and marine firemen and radio operators alone was estimated at $10 million monthly by the PASA.

*Defendant Colorado's Witness, Ward Wire, Direct*

Supply lines to Alaska, Hawaii and Pacific mandate islands and the Japanese occupation forces would be affected, most of them virtually paralyzed.

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[292]

*Trial Minutes.*

*(Testimony of Ward Wire.)*

WARD WIRE, called as a witness in behalf of the defendant Colorado Fuel and Iron Corporation, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Bensel:*

Q. Mr. Wire, where do you reside? [293] A. Denver, Colorado.

Q. Are you connected with Colorado Fuel and Iron? A. Yes, sir.

Q. In what position? A. General traffic manager.

Q. Where are you located? A. Denver.

. . . . . .

[294] Q. Prior to September 3, 1948, had you out there in Denver read or heard about a threatened maritime strike? A. We in our press, the papers there, we had two, touched quite lightly on all general strikes throughout the country. If it was a local one quite near Denver they were quite specific, but the general maritime strike out in the Gulf or the east coast or the west coast, they are pretty meager in their information, but I did read about it in a general way, yes.

. . . . . .

*Defendant Colorado's Witness, Ward Wire, Cross*

[295] Q. When did you first hear about a strike involving this shipment? A. September—late September 7th or September 8th.

• • • • • • •

[297] Q. Prior to September 3rd or September 7th did you know what kind of a crew was aboard the S.S. Hawaiian? A. I knew nothing about the crew or the charter or anything else. All I knew I had confirmed booking for a certain tonnage on the boat.

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*Cross Examination by Mr. Dunn:*

[300] Q. I now ask you the question, did you know then whether the plaintiffs in this case, Badhwar and his company, had ordered any caustic soda from your company at the time you made that booking? A. No, sir.

Q. And you know now, having refreshed your recollection, that the plaintiffs had in fact not ordered any caustic soda from you nor ever negotiated about any such order until sometime after that booking that you made on July 29th? A. No, sir, I never knew anything about that.

Q. Do you know who was handling for your company the negotiation of these caustic soda contracts in India? A. Our export sales department here in New York City.

Q. Did you have any communications with them at the time as to orders for caustic soda? A. Not until they asked me to book a specific amount. The negotiations of sale—

Q. Well, were there sales or advance negotiations that they might have been conducting— A. No, I had no knowledge of their negotiations. I had knowledge only of what they asked me to book.

[301] Q. Did you ever hear of a man named Bartle? A. Yes, sir, I have.

Q. Did he act on this particular contract and in the negotiation thereof? A. To the extent he carried on some

negotiations to get the export permits only, that was his activity—the export permits that were required by the Government.

Q. And to send cables to India in connection with these negotiations? A. Mr. Bartle?

Q. Yes. A. I don't know.

Q. You don't know? A. No.

Q. Was Mr. Bartle's compensation dependent in any way upon the completion of this contract? A. I don't know.

Q. Who would know that fact in your company? A. Well, it could be several different officials that would know about it, the former president, vice president, the manager of the export department, a man who was then manager is no longer with us, but I would have no knowledge of matters of that kind.

Q. Did you know of your knowledge whether any export licenses had been issued or promised for this caustic on July 29th when you made the booking? [302] A. Well, I had to have the export licenses before I could authorize a shipment. I had export licenses for the tonnage involved, yes. We wouldn't let it leave our plant until we had that.

Q. And to your knowledge, was that license or the licenses held by Colorado Fuel and Oil Corporation exclusive licenses of that type then in existence in the United States? A. No, sir; all we know is that we had the license for the given amount of tonnage, and that's all I know about it.

Q. And that's all you knew in the Denver office? A. Yes, sir.

Q. So when you booked this caustic soda on the Jane G. Swisshelm of 1,000 tons you had no knowledge of what contract it was to be scheduled for, did you? A. The shipment?

*Defendant Colorado's Witness, Ward Wire, Cross*

Q. You had no knowledge of who the buyer was or what contract this caustic was supposed to fulfill? A. If I understand your question, I had no knowledge of who the consignee was when I booked tonnage for the precise time, and then later on I got the consignee's name, and then when it left our plant at Ladora, that's the first knowledge I had of [303] the consignee's name.

[310] Q. Is it true that whatever shipping arrangements you had to make in New Orleans for any shipments during that period and for a period of years prior thereto were handled though the Farrell people? A. Yes, all of our shipments that we made where [311] we designate the broker are handled through Farrell. We sell some goods in which they have their own broker that sell F.A.S. Gulf ports, and that is consigned to those brokers in that case, but that is very light.

Q. There is no question that whenever you had to make a shipment of New Orleans you handled the details thereof, the booking of the space and so on, through Mr. Becker and his associates? A. Yes, through his company, Farrell & Company, for many years.

[3]

**Plaintiffs' Exhibit 6.**

*(Morgan Deposition.)*

LOUIS B. MORGAN, residing at 10 W. Maple Drive, New Hyde Park, New York, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunn:*

Q. Mr. Morgan, what is your present position with Colorado Fuel and Iron Corporation? A. My present position is that of export manager.

Q. How long have you been with Colorado Fuel? A. I would say about seventeen or eighteen years.

Q. What was your position with them in 1948? A. My position in 1948, prior to October 21, was that of administrative assistant.

Q. You were administrative assistant to whom, and in what department? A. The Export Department; and I was administrative assistant to the export manager.

Q. What was his name, please? A. Mr. Matt Rosse.

Q. Mr. Rosse is now deceased? A. That is correct.

Q. Speaking as of a period in 1947 and 1948, [4] let us say June, 1947 to September of 1948, how many offices did Colorado Fuel have in the United States, and where were they located? A. I believe I will have to refer to Mr. Knecht for that.

Mr. Bensel: You mean officers, or offices?

Mr. Dunn: Offices.

The Witness: Off the record.

(Discussion off the record.)

A. All I can say is that the general sales offices of the corporation are in New York and in Denver, Colorado. That is my understanding.

*Plaintiffs' Exhibit 6*

Q. Where are the executive offices of the corporation, speaking as of the period 1947, 1948? A. Well, I believe that they would be in New York and in Denver, Colorado —New York City and Denver, Colorado.

. . . . . .

[5] Q. Can you tell us the approximate number of personnel of all types employed by Colorado Fuel in that 1947, 1948 period? A. No, sir.

Q. Did it exceed a thousand? A. Yes.

Q. Did it exceed five thousand? A. Today it does. I presume at that time it did.

Mr. Bensel: The number of employees in 1947, according to the annual report of the [6] company, was 14,666 and in 1948, it was 15,226.

. . . . . .

[12] Q. Did you have anything whatever to do with a caustic soda sale to an Indian firm known as Mulkraj Brothers and Badhwar in the summer of 1948? A. I didn't have anything to do with the actual sale of it.

Q. What part of it did you work on, if any? A. To the best of my recollection, I was brought into [13] the picture in about late August, 1948, just prior to Matt Rosse, the export manager, going on vacation, and, in the interest of reviewing the letter of credit, taking care of other matters pertaining to that transaction, I took over for the two weeks that he was away as a clearing house, you might say, as a kind of intermediary.

Q. Did you then familiarize yourself with the details of the matter? A. I familiarized myself with the details of the sales based on the information which was given to me at that time.

Q. Was there a file which you reviewed? A. There were a few cablegrams, exchange of cablegrams. There was an application for export license. There was a letter of

*Plaintiffs' Exhibit 6*

credit. There is where I got into the picture. There was plenty after that, of course, but that was the beginning.

Q. Can you state the date at which you got into the picture, as you tell us? A. Well, in reviewing my files, it would appear that I got into it after August 20, 1948.

Q. After August 20 and prior to what date? In other words, state the date as nearly as you can. [14] A. The 25th.

Q. Sometime between the 20th and the 25th; is that your best recollection? A. That is right.

. . . . . .

[16] Q. Did you have a Mr. Bartle with the company at [17] that time? A. Mr. Bartle—I don't recall too much the extent how Mr. Bartle fitted into the picture, but Mr. Bartle was, I believe, on a commission basis of some sort. I am not familiar with that.

Q. Who was in charge of your Washington office on Eye Street? A. I do not recollect, at that time.

Q. Did you note from the file in this case that various cables and other communications were signed by Mr. Bartle? A. Yes, sir.

Q. Was he in charge of the Washington office of the company? A. To my knowledge, he was not in charge of the Washington office.

Mr. Bensel: You are assuming that we have a Washington office.

Mr. Dunn: Off the record.

(Discussion off the record.)

The Witness: I would like to correct the assumption I made that the Washington office was in existence at the time. Actually, I do not know when the Washington office was established.

[18] Q. Does the 1616 Eye Street, Washington, address, contained in many of the cables and documents in this case,

refer to some address of Mr. Bartle rather than an office of the corporation itself? A. Frankly, I don't know what that means, other than it is an address where Bartle can be reached, perhaps.

Q. Did you have anything to do with the request to change a letter of credit established by plaintiffs from Bartle's name to the name of the corporation? A. Yes, I think I did.

Q. What was your reason for so doing that? A. The letter of credit was improperly made out. It was not in a form in which I could accept it.

Q. Couldn't you have used it through the cooperation of Mr. Bartle, in whose name it was made out? A. I might have been able to, but I wouldn't have.

Q. Did anybody instruct you to get it changed, or was that your decision? A. I believe that was my decision, or my recommendation.

Q. Who was arranging the loading in New Orleans on this shipment? A. The matter pertaining to shipping would be handled [19] by our traffic department in Denver with a freight forwarder in New Orleans.

Q. Do you know who that freight forwarder was? A. Yes, Farrell Shipping Company.

. . . . . .

Q. Did your export department ever have occasion to communicate with Farrell Shipping Company about any shipments, prior to the Badhwar shipment? A. Offhand, I would say no.

Q. Did you communicate with them at all during [20] the Badhwar transaction? A. I believe that a phone call was made during part of that transaction.

Q. Tell us about that phone call. A. That is a little bit hazy. I believe it had to do with loading or remarking some five hundred tons of soda; caustic soda.

Q. Did you have the conversation? A. Yes.

. . . . . .

*Plaintiffs' Exhibit 6*

[23] Q. Who dispatched or ordered the original cables negotiating a contract with Badhwar or Mulkraj? A. Well, that transpired before I got into the picture.

Q. Did you learn at any time who was responsible for sending those cables? A. Well, I believe Bartle, and I think the Bank was involved in there—the National City Bank, that would be.

[24] Q. Who gave instructions to Bartle and to the National City Bank to negotiate this contract? A. I don't know.

. . . . . .

[27] Q. At the time you took over the file, between August 20 and 25, as you have testified, were you given any instructions to ascertain the sailing date of the vessel in which this shipment was to proceed? A. To my knowledge, I was not, at that time.

. . . . . .

[29] Q. Does that include the whole period from June [30] of 1948 to December of 1948? A. To the best of my knowledge. I don't know whether there was a strike here in New York or not, during that period June to December, without going back and looking it up, but to my knowledge, I don't recall.

Q. Do you mean by that answer that you might have known or might not have known? A. I mean by that answer I might have known about a possible threatened strike in New York, between that period, or that there was actually one in effect. If it was in effect, it would have been pretty common knowledge in New York here. I knew of no strike or threat of strike on the West Coast, nor the Gulf.

Q. Did the export sales transactions arranged by your export department generally involve shipments through Gulf ports? A. Not necessarily. We had quite a few shipments through the East Coast ports.

*Plaintiffs' Exhibit 6*

Q. Did you have any through the West Coast ports? A. The company probably had some through the West Coast ports of which I was not, or my predecessor was not, concerned with, that is, to my knowledge he was not concerned with.

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[38] Q. Where were the various offices of Colorado Fuel and Iron Corporation located in 1948?

Mr. Bensel: The corporation had sales offices and/or warehouses in a number of cities in the East and the Middle West. Do you want me to enumerate all those? Then we have them in the Mid-West and the Far West.

Mr. Dunn: Yes, I will have to ask for a list of the cities.

Mr. Bensel: The Wickwire Steel Division had offices or warehouses in Boston, Buffalo, [39] Chattanooga, Tennessee; Chicago, Illinois; Clinton, Massachusetts; Detroit, Michigan; Emlenton, Pennsylvania; Mount Wolf, Pennsylvania; New York, N. Y.; Newport News, Virginia; Palmer, Massachusetts; Philadelphia, Pennsylvania; and Worcester, Massachusetts.

Colorado Fuel and Iron Mid-Continental Sales Division had offices or warehouses in Abilene, Texas; Albuquerque, New Mexico; Amarillo, Texas, Butte, Montana; Denver, Colorado;; El Paso, Texas; Fort Worth, Texas; Houston, Texas; Lincoln, Nebraska; Oklahoma City, Oklahoma; Phoenix, Arizona; Pueblo, Colorado; Salt Lake City, Utah; Tulsa, Oklahoma; Witchita, Kansas.

California Wire Cloth Corporation, West Coast Sales Division, had offices or warehouses at Los Angeles, California; Oakland, California; Portland;

*Plaintiffs' Exhibit 6*

Oregon; San Francisco, California; Seattle, Washington; Spokane, Washington.

Mr. Dunn: The organizations you have mentioned were all divisions of Colorado Fuel and Iron Corporation; is that not correct?

Mr. Bensel: Except that the California Wire Cloth Corporation is a subsidiary corporation.

[40] Mr. Dunn: Wholly owned?

Mr. Bensel: I think it is.

Mr. Dunn: I merely want somebody to tell me whether it was operated as an integral part of the Colorado Fuel and Iron Corporation.

Mr. Bensel: Frankly, I don't know enough about it to answer that question. Maybe the witness does.

The Witness: I don't, either.

Mr. Dunn: Does it file a consolidated annual report with Colorado Fuel and Iron and are its offices and operations referred to therein together with the parent corporation?

Mr. Bensel: Yes.

Mr. Dunn: Off the record.

(Discussion off the record.)

*Cross Examination by Mr. Tillinghast:*

Q. The Colorado Fuel and Iron Corporation and its affiliates and its subsidiaries manufactures a number of different commodities, does it not, Mr. Morgan? A. Yes, sir, it does.

Q. Are those commodities in general manufactured for export as well as domestic consumption and sales? [41] A. I have only been concerned with the sale of steel products within the company, with the exception of one

or two instances, and this is one of them. Most all the material made is sold at one time or another in the export market, yes.

Q. I am not quite clear as to the function of your particular department. Is it an export sales department, or isn't there any difference between those two terms? A. Well, I would say that it is an export sales department whose purpose is to sell, whose purpose and responsibility is to sell the steel products of the corporation. I have no responsibility on any other product at this time or in the past.

Q. Do I understand, then, that this export sales department which you presently head is concerned only with the sale for export of steel with the exception, say, of caustic soda, occasionally? A. Well, the only occasion was this particular case.

. . . . . .

[43] Q. Did you know, or was your department aware, that India was a principal market for caustic soda? A. I didn't know what caustic soda was until August 20, something or other.

Q. Did you know what particular division or affiliate or subsidiary manufactured caustic soda? A. I didn't know that we manufactured caustic soda.

. . . . . .

[50] Q. Were the goods which finally went forward under this shipment previously allotted to another contract? A. They were probably made up with that thought in mind, yes.

Q. And they were switched from the initial contract to this contract; is that right? A. That is right. That was only part of it, of course. It wasn't the whole transaction; only part of it. That was 500 tons which was in question that they remarked.

. . . . . .

[3]

## Part of Plaintiffs' Exhibit 4.

*(Dalton Deposition.)*

### Proceedings.

The depositions herein were taken pursuant to notice at the office of the U. S. Commissioner, Room 321, Post Office Building, New Orleans, Louisiana, on Wednesday, October 21, 1952.

Whereupon, JOHN HANSEN DALTON, called by and on behalf of the plaintiffs, being first sworn by a notary public, was examined and testified as follows:

. . . . . .

[4] *Mr. Dunn:*

Q. What is your present occupation or position? A. Well, I am a steamship agent.

. . . . . .

[5] Q. And what was your position with Hansen & Tidemann, Inc., in 1948? A. I was a vice president and secretary.

. . . . . .

[20] Q. Was your firm the agents, acting in connection with the steamship Hawaiian in New Orleans on or about August 31, 1948? A. If my memory serves me correctly, I believe that we were acting in the capacity of agents for a New York ship operator, not for the owners of the vessel.

Q. What was the position with respect to the vessel of the New York Steamship company for which you were acting? A. As I understood it at that time, the vessel was on time charter to the particular people we were representing, but of that, I wouldn't be sure. I just understood that was the case.

*Part of Plaintiffs' Exhibit 4*

Q. What was the name of the charterer? A. Isbrandtsen. If he was the charterer, I assume he had the vessel under time-charter, and that was the way I understood it. We were acting as his agent.

[21] Q. Who was the owner? A. That I would guess would be the American-Hawaiian Line, but as we do not represent the owner, I wouldn't know at all. It wouldn't be necessary for me to know who is the owner.

[58] Mr. Dunn:

Q. Will you please read into the record the teletype message recorded on that sheet? A. This is a copy of a telegram form ordinarily used for Hansen & Tidemann to copy telegrams. It is typewritten on this form that "this is a TWX to Houston, August 12th, 1948."

Q. Excuse me. In reading it, Mr. Dalton, would you translate for us any abbreviations or numerals that are used in it? A. Yes, if I can.

This section of it appears to have originated in New Orleans, and it is addressed to apparently our Houston office, "ISBRANDTSEN BOTH BMT"—I don't know in this message what "BMT" means. To me, ordinarily, it would mean "BEAUMONT." The next word is "BOATS CANCELLED UNDERSTAND THOMAS F. BAKER NOW MOBILE EXPECTED TO DEPART AUGUST 23RD. WILL SUBSTITUTE FOR SWISSHELM NEW YORK. ADVISE HER ITINERARY PRIOR TO DEPARTURE MOBILE. CRINKLEY SUPPOSED TO BE NOW MOBILE AND COMING TO NEW ORLEANS SOMETIME TODAY. HOPE HE CAN THROW SOME LIGHT ON SITUATION. MEANTIME KNOW THEY [59] LOOKING AROUND FOR OTHER VESSELS AND DON'T PRESUME CAN TELL TRADE HERE THAT THE BAKER IS THE INDIA VESSEL."

*Part of Plaintiffs' Exhibit 4*

To which apparently our Houston office replied: "BAKER WE ARE CONTINUING THE SWISSHELM ON INDIA BERTH AS TRADE ALREADY FAMILIAR WITH HER NAME AND SEE NO ADVANTAGE CHANGING UNTIL LAST MOMENT STOP HOPE CRINKLEY CAN STRAIGHTEN OUT THE MATTER AS ISBRANDTSEN NEW YORK OFFICE SPINNING AS FAR AS WE ARE CONCERNED."

And it has an indication here that this cost $1.

Mr. Dunn:

Q. Can you identify Mr. Crinkley for us? A. I don't know his exact title, but the Mr. Crinkley mentioned here is, if not an official, certainly a key man of Isbrandtsen Company in New York.

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[68] Q. Now, you testified that Farrell Shipping Company arranged for the shipping space for this caustic soda, did you not? A. No, I did not testify that way. I think I was asked if I knew who was representing the Colorado Fuel & Iron Company. I said, to the best of my knowledge and belief, Farrell Shipping Company.

Q. In connection with the shipment of caustic soda? [69] A. In connection with the shipment of caustic soda.

Q. And they are known as brokers, in the transaction? A. They are known as brokers, in the transaction.

Q. And they received a certain brokerage commission for their services in such a transaction? A. Ordinarily, yes. You are speaking now from the ship?

Q. From somebody? A. I don't know from the shipper. From the ship, ordinarily, they would get a brokerage.

Q. Did they receive a brokerage fee in connection with this transaction? A. I would have to refer to my records, but I am reasonably sure they did.

Q. There is no doubt about it, is there? A. Not in my mind, no.

*Part of Plaintiffs' Exhibit 4*

Q. And that brokerage was paid by whom? A. Well, it would be paid by Isbrandtsen Company, whether direct or through me I don't know at this particular moment.

. . . . . .

[77] Q. You testified that there came a time when you were advised that the ship S/S Hawaiian was strike bound. Is that correct? [78] A. I think I could call it correct. I don't know whether I testified that way or not. We were advised that she had stopped working from the Master's instructions to the stevedores.

Q. Did you thereafter or your company apparently notify Farrell Shipping Company of that fact? A. I don't know whether we officially notified Farrell Shipping Company or not.

Q. You used the term "officially." Would you have done it unofficially? A. I would have done it unofficially; yes.

Q. In the normal course of business? A. Yes. They are friends of mine. If we are in trouble, all the people in the shipping business knows it.

Q. So your best recollection is that you did notify Farrell Shipping Company? A. No. That would not be my recollection at all, because I don't know whether I notified Farrell Shipping Company or not.

Q. You say it is your customary practice? A. To talk about those things. That is correct. We would ordinarily tell the shipper of any delay in transporting his cargo. We feel he is entitled to know about that.

Q. Then, you will state you have every reason to believe that you did notify them? A. I have every reason to believe that I notified him, but I cannot say that I did.

Q. The important notification in a case like that is to be given to the people that still has cargo that has not been loaded? A. Yes.

. . . . . .

*Part of Plaintiffs' Exhibit 4*

[101] Q. Did you notify at any time Farrell about any delay? A. In connection with this caustic soda?

Q. Yes, I am talking about this shipment. The shipments referred to in bills of lading 144 and 145? A. I don't recollect. My memory is not clear whether we [102] notified Farrell or not. There would be no necessity of notifying him formally, but it would be proper to notify him more or less informally as his goods were aboard the ship and the bills of lading were issued.

Q. When you say there would be no necessity of notifying him, will you explain what you mean by that? A. Well, I can't see where it would be too interesting to him, in a formal manner. I can see in one way that he should be formally notified as a broker that his goods were not shipped, or that is, that his goods were being delayed on board this vessel when the fact was known to him.

Q. Was the fact known to him? A. It should be. I don't know whether it was or not, but it should be. I would also assume that it was made known to him through my office, and possibly through other sources. Nothing happens on the waterfront in cases like this that everybody in the business doesn't know something about it.

. . . . . .

*Part of Plaintiffs' Exhibit 4*

[111]

*(Smith Deposition.)*

ROBERT T. SMITH, called by and on behalf of the plaintiffs, being first sworn by a Notary Public, was examined and testified as follows:

*Direct Examination by Mr. Dunn:*

Q. Mr. Smith, what is your present occupation or position? A. I am president of the Standard Stevedoring Company, Inc.

. . . . . .

Q. Prior to the establishment of the company you just mentioned, were you with another company in New Orleans? A. January 1—now, I have to figure back—let's see.

Q. Needn't be too precise. A. January 1, 1947, until September 17, 1951, I was vice president and general manager of the New Orleans Stevedoring Company.

Q. How long have you been connected with the Maritime Industry altogether? [112] A. About thirty-eight years.

. . . . . .

[116] Q. Did you through any of these media of public information become informed of a strike situation on the Pacific Coast in the summer of 1948 which threatened to tie up all Pacific Coast shipping and had to be enjoined by the Court under the Taft-Hartley Act?

Mr. Tillinghast: I object to the form of all this questioning. We have allowed considerable latitude and I must insist counsel stop using leading questions. This is a capable witness and he can answer specific questions to his own knowledge.

*Part of Plaintiffs' Exhibit 4*

Mr. Dunn:

Q. Will you answer the question? A. Will you repeat it, please?

(Question read by the reporter.)

Mr. Tillinghast: I repeat my objection.

Mr. Dunn:

Q. Please state your answer? A. I would say that I was familiar with a threatened or a strike on the West Coast by certain unions, Maritime [117] unions, but as to any reference to the Taft-Hartley Act injunctions, I can't honestly say that I recall that. Naturally, in our business, you are around ships all the time; you hear people talking; you are constantly hearing rumors or true stories of certain happenings, but in this day and age, strikes are nothing uncommon and just like most everything else, I suppose, you get accustomed to hearing strikes and it doesn't have its effect like it did in years gone by.

• • • • • • •

[118] Q. Do you know any of the unions that were involved in that labor dispute? A. To the best of my knowledge, it seems that on the West Coast every department of a vessel has its own union, such as the crew having one union, the cooks and stewards belonging to another union; radio operators, officers, even the engineers, I believe, have a separate union. Being outside of my particular field, I have never paid too much attention to those various unions and their functions.

• • • • • • •

[119] Q. Do you know whether the longshoremen on the Pacific Coast have a different union from the longshoremen in New Orleans? A. They do, the West Coast is C.I.O. affiliate and the Gulf is A. F. of L. affiliate.

*Part of Plaintiffs' Exhibit 4*

Q. Do you know who headed the longshoremen's union on the Pacific Coast or who headed it in 1948? A. I believe it was Harry Bridges.

Q. Apart from Bridges' union on the Pacific Coast, you testify, I believe, that there is another longshoremen's union on the East Coast to which the longshoremen are affiliated. Clarify that. A. To the best of my knowledge, all your East Coast unions are affiliates of the American Federation of Labor.

Q. And that includes the New Orleans Branch of the Longshoremen? [120] A. The Gulf area.

Q. And the Pacific Coast longshoremen belong to a C.I.O. union? A. That's correct.

Q. Do you recall any strike in this country in which Bridges' C.I.O. union was involved? A. You mean when you say "this country," you mean the West Coast?

Q. I mean—yes, the entire country, or any area of the—I don't mean it had to cover the entire country? A. So far as Harry Bridges is concerned, it's my understanding that any strikes he may call would only be on the West Coast or possibly the Hawaiian Island, where his union has jurisdiction, but his union has no jurisdiction on the East Coast or the Gulf Coast, and, naturally, it would have no authority to call a strike in those areas.

Q. Was his union involved in the 1948 strike? A. I can't recall that.

Q. In connection with your business, did you have any concern as to whether that strike might spread to the East Coast? A. Not so far as our longshore organizations are concerned; the American Federation of Labor or the I.L.A. has never followed Bridges. They are very antagonistic. The I.L.A. locals in the Gulf consider Harry Bridges' organization as communistic, and, to the best of my knowledge, have [121] never gone along with them, and from the remarks of the union leaders, we would never go along with them.

*Part of Plaintiffs' Exhibit 4*

Q. Have any concern about any other unions spreading their strike beyond the Pacific Coast? A. Well, the only other Pacific Coast unions would naturally be the Maritime unions that control ship personnel. If the ships are manned by unions dominated on the West Coast were in ports in any other section of this country, those ships naturally would go on strike.

Q. Did that actually happen in New Orleans resulting in the tying up of any ship; do you recollect? A. What period are you referring to?

Q. 1948, same period. A. I take it you are referring to the period when the American steamer Hawaiian was in port?

Q. Yes. A. Yes, there were several ships tied up in the Port of New Orleans during that period.

Q. One of them was the S/S Hawaiian, was it? A. That's correct.

Q. And at what wharf was that loading at the time? A. At Westwego Terminals of the Missouri Pacific Railroad or Missouri-Pacific Texas-Pacific.

Q. Were other ships tied up at the same wharf? By tied up, I mean loading operations? [122] A. No, not at Westwego Terminals.

Q. Where, then, if you know? A. Beg pardon?

Q. Where, then, if you know? A. I just don't remember the exact number of ships in port at that time that were involved in the tie-up. I have a recollection of one other ship that was at the New Orleans Port of Embarkation. To the best of my knowledge, they were the only two ships in port loading general cargo at the time.

Q. There were, however, a number of other vessels in the Port of New Orleans which were not affected by any strike or stoppage of work? A. Yes, I'd say there were.

Q. Referring again to the loading of the vessel Hawaiian at New Orleans, did the New Orleans Stevedoring

*Part of Plaintiffs' Exhibit 4*

Company, Inc., supply the stevedores on that job? A. Yes, sir, they were the contractors designated by Isbrandtsen to load the vessel.

. . . . . .

[130] Q. Were you dealing with the Isbrandtsen New York Office as well as the agents here? A. Yes, my dealings are with the operating man in Isbrandtsen's office. Of course, in a big steamship company, you have the Traffic Department as well, to consult with and usually they are the ones that the agents consult with, the Traffic Department, and often there are a conflict of questions asked by the New York office. For instance, the Traffic Department may ask the agent how much overtime is involved, whereas, on the other hand, the operating department may have asked me directly how much overtime was involved, and sometimes the agents want that information themselves so as to keep abreast of the amount of money required to disburse the vessel because ordinarily they have an advance from the operator on the estimate expenses.

. . . . . .

[134] Q. (Hands document to witness) When did the day shift start on September 3rd? A. Apparently the vessel worked continuously from 7:00 A. M. on Thursday, September 2, until 10:00 A. M. on Friday, September 3.

Q. Do you recall when the night shift went off and the day shift came on? A. I don't recall whether the night shift knocked off at 6:00 A. M. or 7:00 A. M., however, the Port Log indicates continuous work from 1:00 A. M. until 10:00 A. M. Under the normal working plans, the night shift would have stopped at 7:00 A. M. and the day shift taking over at that time.

Q. So that the first two hours of normal days' work would be 7:00 to 9:00? [135] A. Unions have their own interpretation on that. They say that the guarantee of

*Part of Plaintiffs' Exhibit 4*

two hours in the daytime predicated on a normal working day from 8:00 o'clock. If you call a laborer out an hour earlier, that is, at 7:00 A. M., that's a premium hour and it's not considered in the minimum time. That's been a long dispute between management and unions on that.

Q. So that the two guarantee hours would commence at 8:00 A. M.? A. That's right, according to the union's version.

Q. And you have testified that there were two hours during which your men were engaged in battening down hatches and doing various activities of that type other than actual loading of the vessel? A. I was aboard the vessel that morning and if my memory serves me correctly, I interceded with the union delegate of the ship's crew, whether it was the steward or the firemen, I don't recall, to be given more time to run out the guarantee of the labor. Sometimes, when you are granted a few hours more, you can usually get a few hours more and that's usually our tactics. However, we are naturally interested in minimizing expenses as much as possible so we try to prevent any dead time in being paid to labor.

. . . . . .

[168] Q. Would you say that the operators did all they could to load the vessel while they had the opportunity to do so? A. Yes, I would say so, Mr. Dunn. Every good operator strives very hard to get his ship at sea if there is a pending work stoppage. I might facetiously say that that applies to Christmas, too, and in all my experience, which has been many years, I have naturally come upon many work stpppages, contemplated work stoppages. For instance—

Mr. Tillinghast: Don't stop.

Mr. Bensel: Let him finish his answer.

*Part of Plaintiffs' Exhibit 4*

A. For instance, if we anticipate trouble through the expiration of our contract, we have often been called [169] upon to try to complete the loading before that trouble happens, if we are sure that it's going to happen.

Mr. Dunn:

Q. And in this particular case you did all that you could to get the ship loaded at that time, is that so? A. I would say that from the record, that's apparently so by reason of working all that night prior to the work stoppage.

Mr. Scott: Your letter of September 2 indicates that you wanted to get the vessel loaded and at sea at the earliest possible, doesn't it?

A. That letter indicates that they wanted the ship to sail on Saturday.

Mr. Scott:

Q. September 4? A. Whatever the date is, and as I say, I don't know whether that was the scheduled sailing date of the vessel or whether that Saturday sailing was in anticipation of the strike. Sometimes unions use a week end as the beginning of a strike.

Mr. Tillinghast:

Q. In the same way, is it customary to suspend ship operations when you consider that a strike might be about to occur? A. No, sir, we keep—

Mr. Dunn: Object to that question.

[170] A. We keep working up till the time we are actually stopped.

Mr. Tillinghast:

Q. Why do you continue to work? A. We continue to work because there is often disturbances of various

kinds that are in the offing, but never materialize. We just couldn't stop industry because of a threatened or a rumored strike.

* * * * * * *

[171] Mr. Tillinghast:

Q. Isn't the element of surprise one of the tactics often used by a labor union in compelling its demands? [172] A. In a general strike, no. However, sometimes the unions will jump the gun on the effective date of the strike which would be an element of surprise in some instances.

Mr. Tillinghast:

Q. Of course, you can't tell in advance how general a strike is going to be, can you? A. Only if it refers to a particular union.

Mr. Dunn:

Q. In connection with this subject of strikes, is picketing a weapon often used by strikers? A. On our river front it's always used.

Q. And the picketing may or may not commence with the declaration of the strike? A. That's so. Sometimes the picket lines are not established until several hours after the strike has actually been called. Sometimes, the pickets are there right on the minute.

Mr. Tillinghast:

Q. Sometimes before, right? A. No, they are not on the line until the minute—they usually don't strike before.

Mr. Dunn:

Q. But there can be a lapse of time depending on the particular case before the picketing is established? A. There can be, but in such instances it's only a matter of [173] an hour or so and that comes about.

*Defendant Isbrandtsen's Witness, Matthew S. Crinkley, Direct*

Mr. Dunn:

Q. Would you say it never is greater than that? A. As to my knowledge and my experience, it's never been greater than several hours.

Q. But its haste or delays depend upon the individuals who comprise the unions, how they conduct their activities; isn't that so? A. Not necessarily. As an example, a union may declare a certain hour as the effective day of a strike. Certain of the membership of the union become a little hasty and will walk off of their job before that hour is set and sometimes when they walk off before that hour is set, they form their own picket line.

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*Trial Minutes.*

*(Testimony of Matthew S. Crinkley.)*

[317] MATTHEW S. CRINKLEY, called as a witness by defendaent Isbrandtsen Company, Inc., being first duly sworn, testified as follows:

*Direct Examination by Mr. Scott:*

Q. By whom are you employed, Mr. Crinkley? A. By the Isbrandtsen Company, Inc., of New York.

Q. What is your position? A. My position is executive vice president.

Q. How long have you held that position? A. Two years. Before that I was vice president since about 1936 or 1937.

* * * * * * *

[320] The Court: What was the ordinary time that was taken in 1947 and 1948, for a voyage from New Orleans to Bombay, India, of a freight cargo steamer or vessel?

The Witness: I think it might have been [321] on a direct voyage through the Mediterranean, that is, from New

Orleans through the Mediterranean to Bombay about 25, 24 or 25 days, I understand, if the ship, for instance, did not go to other ports en route.

The Court: Is it usual to have a ship go direct from New Orleans to Bombay without discharging cargo at intervening ports at the time the shipment is booked?

The Witness: I don't think it was usual. I cannot speak of operations of some of the lines—

The Court: The Isbrandtsen vessels that made this voyage at or about September, 1948, what was the average time that they took to complete the voyage from New Orleans to Bombay, India?

The Witness: We did not have regular line service and regular line sailings from the United States gulf ports to that area because that presented a special berth sailing.

The Court: Was it the inauguration of a new service?

The Witness: No, sir. There was a demand by a great many shippers for service because the lines that were in regular operation were not able to take [322] care of the volume of cargo moving at that time.

The Court: Moving from where to where?

The Witness: From the United States Gulf ports to the Persian Gulf and India.

The Court: Are you familiar with the usual route taken or that was taken in September, 1948 for a cargo vessel traveling from New Oarleans to Bombay?

The Witness: Yes, sir, to this extent, and one American line that I know of goes to India by the Persian Gulf, and another one goes to Indian ports and then around to Calcutta.

The Court: Is it the usual route through the mediterranean and Suez?

The Witness: Yes, sir.

The Court: That was the usual run.

The Witness: Yes, sir.

*Defendant Isbrandtsen's Witness, Matthew S. Crinkley, Cross*

By Mr. Scott:

Q. Did this vessel take the usual route? A. Well, as I said, there are two routes that I know of and there may have been others. I don't know whether you could say it is a usual route or not, but we laid out the itinerary of the vessel from the time that we arranged the sailing to [323] go to Bombay, India via the Persian Gulf.

Q. Was this a normal voyage after the vessel left the Port of New Orleans? A. Yes, sir, I would say it was.

. . . . . .

*Cross Examination by Mr. Tillinghast:*

Q. Mr. Crinkley, in what business is the Isbrandtsen Company engaged, please? A. Well, as far as the steamship business, I suppose you might say our business is the accommodation of regular established line service and of tramp or charter service. Both types are done by the company and have been through the years.

Q. You use ships which your company owns in your service and you also charter ships when the requirement arises, is that true? [324] A. That is true and has been true all through the existence of the firm.

Q. How many vessels did your company own in 1948? A. I would say approximately 10.

Q. Well, for what purpose would you charter ships, when would the need arise for you to charter ships? A. Well, I say at that time we were operating owned and chartered ships to a number that would vary from 60 to 80. On the vessels that we chartered we operated some of those in line or berth service and some of them in tramp service.

Q. Is it fair to say that you would charter ships to ship cargo which was booked and which your own ships were unable to take for some reason or other? A. That could be true; it wasn't a usual thing.

*Defendant Isbrandtsen's Witness, Matthew S. Crinkley, Cross*

Q. When you chartered a ship you shipped cargo for which you contracted, isn't that true? A. Yes, sir, but it might not be cargo moving on one of our regular line routes.

Q. What was your purpose in chartering the Hawaiian in 1948? A. To perform this voyage from the United States Gulf ports to the Persian Gulf and to India.

[332] Q. In 1948, Mr. Crinkley, were the crews of the vessels which your company owned unionized? A. Yes, sir.

Q. There was considerable labor unrest during that year in the maritime industry, wasn't there? A. Yes, sir.

Q. You were aware of that unrest, were you not? A. Yes.

Q. Did you know that the collective bargaining agreements had expired on the 15th of June, 1948? A. We knew that that was so, yes.

Q. Isn't it true that your company either on its own behalf or through collective action with other owners had negotiated towards settlement of these disputes with your unions? A. That's right.

Q. Did you know that during this period, particularly in August, that the Isbrandtsen Company was the subject of injunctive actions by the United States Government in a suit pending in New York? A. I think you will have to identify it a little further than that. I just don't offhand recall.

Q. Do you recall that your company was served with papers in connection with a suit brought by the [333] Government against all the maritime unions, longshore unions and the operators enjoining strikes and lockouts? A. Yes, I think I understand what you mean there.

*Defendant Isbrandtsen's Witness, Matthew S. Crinkley, Cross*

Q. Are you aware of that situation? A. Yes. You mean of the whole industry?

Q. Yes. A. Not just the Isbrandtsen Company alone.

Q. No, of course not. By the way, was the labor unrest localized to any particular port or part of the country? A. I think it was rather general.

. . . . . .

[335] By Mr. Scott:

Q. As between Isbrandtsen and American-Hawaiian Steamship Company, who had charge of the labor relations with the crew? A. American-Hawaiian. That was a time chartered vessel in which the charterer, in this case Isbrandtsen, has nothing to do with the supplying or dealing with the crew.

Mr. Scott: That is all.

By Mr. Bensel:

Q. Mr. Crinkley, on the ships that Isbrandtsen either owns or operates itself—I am referring back to the period 1948—were the crews of those ships unionized? A. Yes, sir.

Q. And were they East Coast unions? A. Yes, sir.

Q. Gulf Coast unions? A. Well, they were East Coast unions.

Q. In other words, the crews of the Isbrandtsen ships were members of East Coast unions? [336] A. Yes, sir.

Mr. Bensel: That is all.

*Cross Examination by Mr. Dunn:*

Q. Mr. Crinkley, weren't some of the unions on Isbrandtsen ships national unions? A. I think they all call themselves national unions.

*Defendant Isbrandtsen's Witness, Matthew S. Crinkley, Cross*

Q. What I am getting at is, weren't some of the unions on the Isbrandtsen ships also on the American-Hawaiian Steamship Line ships and other lines throughout the country? A. I am not certain as to whether or not some of the several unions that are represented on the ship may have been the same East and West Coast.

Q. They may well have been the same; is that your position? A. Some of them may have been the same. I know some of them were not the same.

Q. Was the American-Hawaiian Steamship Company, to your knowledge, domiciled in California in 1948? A. That is my understanding.

Q. So would you think of it, then, in terms of a West Coast line? A. I beg your pardon.

[337] Q. Were you thinking of it, then, in terms of a West Coast line when you used these terms "East Coast" and "West Coast"? A. It is not just that it was a West Coast Line. The American-Hawaiian Company is a very, very old line. They had certain operations and they owned vessels which they did not always use in their line services which included the vessel we chartered from them. I just had in mind that they were a West Coast firm with its main offices in San Francisco.

Q. Would you find it in any way unusual if they had in their personnel West Coast union members? A. Would I have found it unusual?

Q. Yes. A. No. I would say, as a matter of fact, in answer to that question, that in my own particular work with the company and having primarily to do with the quotation of freight rates, the booking of cargo and arranging of voyages, that I personally don't deal with crew matters. I just say that there so you will understand my answer to your question.

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*Defendant American-Hawaiian's Witness, Robert L. Gray, Direct.*

*(Testimony of Robert L. Gray.)*

[398] ROBERT L. GRAY, called as a witness on behalf of American-Hawaiian Steamship Company, being first duly sworn, testified as follows:

*Direct Examination by Mr. Tillinghast:*

Q. By whom are you employed, Mr. Gray? A. American-Hawaiian Steamship Company.

Q. In what position? A. Vice president and operating manager.

Q. And what position did you hold with your company in 1948? A. Two positions, prior to the first of [399] September, Acting Atlantic Operations Manager, and after the 1st, Atlantic Operations Manager.

. . . . . .

Q. Were you in charge of any vessels operating out of any other ports, on the West Coast, for example? A. No, the West Coast was handled by the Pacific operating manager.

Q. And when a ship came to the East Coast then it came under your dominion? A. That is correct.

Q. And how about the ships in the Gulf? A. The Gulf came under the Atlantic Coast.

Q. Under your dominion also? A. Yes.

Q. So that did your duties include, among other things, arranging for charters of your ships at that time [400] when they were not required in your own services? A. Yes, sir.

Q. Did your company in 1948 own the S. S. Hawaiian? A. Yes.

Q. In August of that year did your company negotiate a charter of that ship with Isbrandtsen Company? A. Yes.

. . . . . .

*Defendant American-Hawaiian's Witness, Robert L. Gray, Direct*

[408] Q. After the crew walked off the ship, what action, if any, did the Isbrandtsen Company take? A. I imagine they stopped loading cargo.

Q. Did they also declare the ship off hire? A. Oh, yes, they declared the ship off hire, yes.

Q. When was hire next resumed, Mr. Gray? A. When the ship went back into operation sometime in December.

Q. After the strike was over? A. Yes.

. . . . . .

[410] Q. When did the collective bargaining agreements, if you know, between the union and your company expire by their terms? A. I think it was in June sometime. I don't remember the exact date.

Q. Were there any negotiations between the time the contract expired by its terms and possibly prior thereto up to the time the vessel went on strike? A. Yes.

[411] Q. Were those negotiations continuous? A. Yes, they were.

Q. Were all disputes unresolved during this period by negotiation? Did all the disputes remain unresolved? Were you in agreement with the unions on anything? A. Oh, yes, on some things we were in agreement and other things not.

Q. What would you say with respect to the prospects of a strike, say, in the middle of August, 1948? Did you know the strike was going to occur? A. No, I did not.

Q. Were you optimistic that the disputes would be resolved by negotiation? A. I thought we would get together, yes.

Q. Right up to the last minute? A. Yes.

Q. And when—

Mr. Dunn: Just a moment. The question, I believe, was with reference to the middle of August.

Mr. Tillinghast: Right up to the time the crew walked off on the strike at the last minute.

*Defendant American-Hawaiian's Witness, Robert L. Gray, Cross*

Mr. Dunn: It is leading, but I will withdraw my objection.

[412] By Mr. Tillinghast:

Q. Do you know if they were negotiating on the 2nd of September, Mr. Gray? A. Yes, I believe they had a meeting the morning of the 2nd of September.

Q. And at that time they were in agreement on a great many things, weren't they? A. On some things they were in agreement, yes.

Q. When the strike was finally declared, how long was it going to last? A. At that time I did not know.

Q. Did anybody know? A. I don't believe so.

Q. Did the negotiations continue after the strike was declared? A. Yes, they did.

Q. The disputes might have been settled at any time, isn't that true? A. Oh, yes.

Mr. Tillinghast: I have no further questions.

Mr. Bensel: No questions.

Mr. Scott: No questions, your Honor.

The Court: All right, Mr. Dunn.

[413] *Cross Examination by Mr. Dunn:*

Q. When you offered this vessel to Isbrandtsen for charter, did you tell them anything about the strike to which she might be subject? A. I did not.

Q. Did you assume they knew as much about it as they did? A. I would assume so, yes.

Q. Did you communicate with Isbrandtsen about the course of this strike at any time from the chartering of the vessel until the eventual tieup? A. I have no recollection of having done so.

Q. I will show you a document to refresh your recollection of at least one instance, a telegram marked Plain-

tiff's Exhibit 4, a sub-exhibit to Plaintiff's Exhibit 4 in this case (handing to witness). A. Yes, this is from me.

. . . . . .

[415] Q. Did you send similar telegrams to any other vessels of your company? A. I believe I did, yes.

Q. Did you give the master of the Hawaiian any instructions concerning leaving port in view of the threatened strike? A. I don't recall giving him any instructions about leaving the port on account of a strike, no.

Q. Where did you get your information as to the labor situation mentioned in that telegram? A. From San Francisco.

Q. What material did you receive from San Francisco, if any, on the basis of which you composed that telegram that you sent to Captain Masse? A. The telegram that was sent to Captain Masse was outlined by Mr. Plant. He was our vice president [416] of operations. He instructed me what to send.

Q. He was at San Francisco? A. San Francisco, yes.

Q. Did he talk to you generally about the strike situation out there at the time he communicated with you? A. Yes.

Q. Was this on the telephone or by some other method? A. Telephone conversations, teletypes. I don't recall any letters. Things were happening so fast it had to go that way.

Q. Was he keeping you informed in that fashion as time went along, let's say, for days prior to September 2nd? A. Yes, in general I was kept very well informed of what was going on.

Q. On September 2nd did he inform you that the longshoremen were on strike in San Francisco, up and down the Pacific Coast? A. I don't recall that. I recall that he told me the situation didn't look too good.

Q. With respect to the longshoremen, the union headed by Harry Bridges, did he inform you that on September

*Defendant American-Hawaiian's Witness, Frank H. Bain, Direct*

[417] 2nd they had actually gone on strike on the Pacific Coast from Los Angeles to Seattle? A. I can't recall that he specifically did. No doubt the way things were going he did. My primary interest was in the maritime section of the seagoing personnel.

Q. But he talked to you generally about what the situation was? A. Yes.

Q. Did he tell you in any manner at that time whether the injunction had been lifted on the Pacific Coast? A. Well, the injunction proceedings and matters pertaining to it were generally well known to us here.

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[420] Q. Did you know at that time that a strike would be called? A. The only thing I knew at that time was that the situation did not look good.

Q. That was in the afternoon of September 2nd, as I recall? A. That is true.

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*(Testimony of Frank H. Bain.)*

[422] FRANK H. BAIN, called as a witness by defendant, American-Hawaiian Steamship Company, being first duly sworn, testified as follows:

*Direct Examination by Mr. Tillinghast:*

Q. Captain Bain, by whom are you employed, please? A. American-Hawaiian Steamship Company.

Q. Were you employed by that company in 1948? A. Yes.

Q. In what position? A. I was Atlantic marine superintendent.

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[427] Q. Were you familiar with the negotiation of labor disputes during the year 1948 between your company and the maritime unions? A. In general, yes.

*Defendant American-Hawaiian's Witness, Frank H. Bain, Cross*

Q. Were those negotiations fairly continuous? A. Yes, they were.

[428] Q. Up to the time the strike was declared? A. That's correct.

Q. Did you consider that there would be a strike? A. No, we were all quite optimistic that there would not be a strike, that negotiations would continue.

Q. Did you carry on your business on a day-to-day basis with that in mind? A. That's right. We continued on in a normal way.

Q. When the strike was finally declared, was there any way of knowing what its duration would be? A. No.

Q. Did your company continue to negotiate with the unions toward a settlement? A. I understand that they did, yes.

Mr. Pillinghast: That's all.

Mr. Bensel: No questions.

Mr. Scott: No questions.

*Cross Examination by Mr. Dunn:*

Q. In view of the fact the log is in evidence I will not question about that.

Captain Bain, with respect to the remark just made about being optimistic concerning the strike situation, you based that, did you not, on the fact that [429] the negotiations were continuing? A. That's right.

Q. Those negotiations had begun sometime prior to June 14, 1948, had they not? A. That's right.

Q. And they continued all through the 80-day period of the Taft-Hartley injunction? A. Yes.

Q. And thereafter, after the strike began, they continued all the way up to December 13th before they resulted in a settlement; is that correct? A. That's right.

Mr. Dunn: That's all.

The Court: Thank you.

(Witness excused.)

*Part of Plaintiffs' Exhibit 4*

Gray Telegram of September 2, 1948.

(Part of Plaintiff's Exhibit 4.)

CDU227 RX PD=CD NEWYORK NY 2 116P=

1948 SEP 2 PM 1 07

HANSEN & TIDEMANN=
CARONDELET BLDG NRLNS=

FOR CAPTAIN MASSE MASTER SS HAWAIIAN. WITH REFERENCE TO PRESENT LABOR SITUATION, FOLLOWING INSTRUCTIONS ARE TO BE COMPLIED WITH ON YOUR VESSEL. THE GENERAL PRINCIPLE OF NO WORK NO PAY WILL APPLY. UNTIL FURTHER NOTICE DO NOT PAY OFF ANYONE EXCEPT FOR GOOD AND SUFFICIENT REASON AS WE WILL NOT BREAK ARTICLES. ANYONE LEAVING VESSEL WILL BE DECLARED DESERTER AND WE MUST IN ALL WAYS PROTECT OUR LEGAL RIGHTS. MASTERS SHOULD MAKE FULL ENTRIES IN LOG BOOK REGARDING THE LAST SHIFT WORKED OR THE LAST MOMENT PEOPLE ABOARD. THESE LOG ENTRIES SHOULD BE MADE IN THE DECK BRIDGE LOG BOOK. MASTER SHOULD KEEP A DAY BY DAY RCEORD OF ALL PEOPLE REMAINING ABOARD VESSEL. ANYONE LEAVING VESSEL SHOULD BE INCLUDED IN THE DAY BY DAY RECORD GIVING THE TIME MAN LEFT VESSEL AND REASON FOR SO DOING. IN THE EVENT THAT IT BECOMES NECESSARY TO SHUT DOWN VESSEL MASTERS ARE TO TAKE ALL PRECAUTIONS REGARDING VESSELS SECURITY. THIS INCLUDES PROPER SECURING OF PLANT. ADEQUATE FIRE PROTECTION AND LIGHTING. TO

*Part of Plaintiffs' Exhibit 4*

BE ARRANGED. ADEQUATE SECURITY WATCHES TO BE MAINTAINED. A DAY BY DAY REPORT IS TO BE MADE TO THIS OFFICE REGARDING STATUS OF EACH VESSEL=

R L GRAY AMERICAN HAWAIIAN SS CO=

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Gray Telegram of September 3, 1948.

(Part of Plaintiff's Exhibit 4.)

CDU235 LONG PD=CD NEW YORK NY 3 258P=

1948 SEP 3 PM 2 34

HANSEN & TIDEMANN=
CARONDELET BLDG NRLNS=

FOR CAPTAIN MASSE MASTER SS HAWAIIAN SUPPLEMENTING MY PREVIOUS WIRE RE YOUR VESSEL MR. PLANT HAS ADVISED AS FOLLOWS: ON ALL VESSELS THAT HAVE ARTICLES OPEN, ARTICLES ARE TO BE KEPT OPEN AND ALL STRIKERS ARE TO BE LOGGED DESERTERS AND FOR PURPOSE OF UNEMPLOYMENT INSURANCE IF THEY DEMAND TO BE PAID OFF ADVISE THEM CONTINUED EMPLOYMENT IS AVAILABLE TO THEM. AS MATES AND SAILORS ARE NOT ON STRIKE THEY ARE TO BE PAID OFF BY MUTUAL CONSENT AFTER ALL VESSEL REQUIREMENTS FOR SAFETY AND SECURITY HAVE BEEN MET UNLESS IN YOUR OPINION YOU CONSIDER ANY OF THESE MEN NECESSARY FOR SECURITY OF SHIP AND CARGO=

R L GRAY AMERICAN HAWAIIAN SS CO=